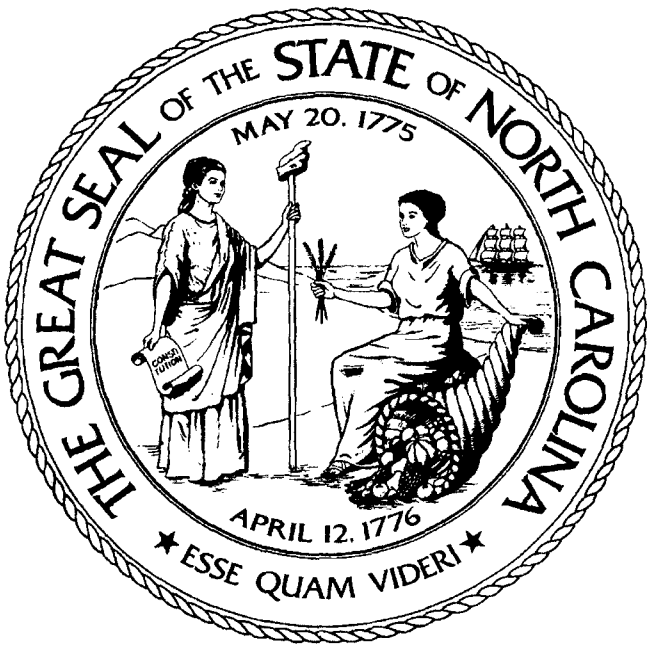
2013-2014
REVENUE LAWS STUDY COMMITTEE



REPORT TO THE 2013-2014 GENERAL ASSEMBLY OF NORTH CAROLINA 2014 SESSION

A LIMITED NUMBER OF COPIES OF THIS REPORT IS AVAILABLE
FOR DISTRIBUTION THROUGH THE LEGISLATIVE LIBRARY

ROOM 500
LEGISLATIVE OFFICE BUILDING
RALEIGH, NORTH CAROLINA 27603-5925
TELEPHONE: (919) 733-9390

THE REPORT IS AVAILABLE ON-LINE:
http://www.ncleg.net/library/Collections/legpub.html

THE REPORT AND ALL MEETING MATERIALS ARE ALSO AVAILABLE ON-LINE
AT THE COMMITTEE'S WEBSITE:
http://www.ncleg.net/DocumentSites/committees/revenuelaws/Homepage/index.html

TABLE OF CONTENTS

Appendices*

*All of the meeting handouts, including Power Point presentations, may be accessed online in PDF format at the Revenue Laws Study Committee website: http://www.ncleg.net/committees/revenuelaws

JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE

State Legislative Building
Raleigh, North Carolina 27603

Representative Julia C. Howard, Co-Chair *Senator Bob Rucho, Co-Chair*

May 9, 2014

TO THE MEMBERS OF THE 2014 GENERAL ASSEMBLY:

The Joint Legislative Oversight Committee on Unemployment Insurance submits to you for your consideration its report pursuant to G.S. 120-70.155; S.L. 2013-2, Section 10; House Bill 4, Section 10.

Respectfully Submitted,

Rep. Julia C. Howard, Co-Chair

Senator Bob Rucho, Co-Chair

2013-2014

REVENUE LAWS STUDY COMMITTEE

MEMBERSHIP

Senator Bill Rabon, Co-Chair

Senator Tamara Barringer
Senator Ben Clark
Senator Daniel G. Clodfelter[1]
Senator David L. Curtis
Senator Joel D. M. Ford[2]
Senator Rick Gunn
Senator Fletcher L. Hartsell, Jr.
Senator Floyd B. McKissick, Jr.
Senator Bob Rucho

Rep. Julia Craven Howard, Co-Chair

Rep. Kelly M. Alexander, Jr.
Rep. John M. Blust
Rep. William Brawley
Rep. Becky Carney
Rep. David R. Lewis
Rep. Tim D. Moffitt
Rep. Mitchell S. Setzer
Rep. John Szoka
Rep. Ken Waddell

ADVISORY MEMBERS

Senator Jerry W. Tillman, Advisory

Rep. Mike Hager, Advisory
Rep. Ruth Samuelson, Advisory
Rep. Paul Stam, Advisory
Rep. Edgar V. Starnes, Advisory
Rep. Andy Wells, Advisory

STAFF

COMMITTEE ASSISTANTS:
Kyle Chermak
DeAnne Mangum

RESEARCH DIVISION:
Cindy Avrette, Staff Attorney
Heather Fennell, Staff Attorney
Trina Griffin, Staff Attorney
Greg Roney, Staff Attorney
Judy Collier, Research Assistant
Kelly Quick, Research Assistant

BILL DRAFTING DIVISION:
Dan Ettefagh, Staff Attorney

FISCAL RESEARCH DIVISION:
Rodney Bizzell, Fiscal Analyst
Barry Boardman, PhD, Economist
Sandra Johnson, Fiscal Analyst
Patrick McHugh, Fiscal Analyst
Brian Slivka, Fiscal Analyst
Jonathan Tart, Fiscal Analyst

---

[1] Resigned 04-08-2014.

[2] Appointed 05-06-2014, to fill the unexpired term of Senator Dan Clodfelter. A former advisory member to the Committee.

PREFACE

The Revenue Laws Study Committee is established in Article 12L of Chapter 120 of the General Statutes to serve as a permanent legislative commission to review issues relating to taxation and finance. Before it was created as a permanent legislative commission in 1997, the Revenue Laws Study Committee was a subcommittee of the Legislative Research Commission. It has studied the revenue laws every year since 1977. The Committee consists of 20 members, 10 appointed by the President Pro Tempore of the Senate and 10 appointed by the Speaker of the House of Representatives.[1] Committee members may be legislators or citizens. The Co-Chairs for 2013-2014 are Senator Bill Rabon and Representative Julia Howard.

In its study of the revenue laws, G.S. 120-70.106 gives the Committee a very broad scope, stating that the Committee "may review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable." A copy of Article 12L of Chapter 120 of the General Statutes is included in Appendix A.[2] A committee notebook containing the Committee minutes and all information presented to the Committee is filed in the Legislative Library and may also be accessed online at the Committee's website:

[1] The Speaker of the House of Representatives appointed a ninth, non-voting advisory member in 2007. In S.L. 2009-574, the General Assembly expanded the legislative membership of the Committee from 16 members to 20 members. In 2009, the Speaker appointed a twelfth non-voting advisory member. In 2013, the Speaker appointed five non-voting advisory members and the Senate appointed two.

[2] The General Assembly established a permanent subcommittee under the Revenue Laws Study Committee to study and examine the property tax system in S.L. 2002-184, s. 8. However, subcommittee members were not appointed and the subcommittee did not function from 2004 through 2010. In S.L. 2011-266, s.1.15, the General Assembly repealed the subcommittee. The full Committee continues to review the property tax system and recommend changes to it.

http://www.ncleg.net/DocumentSites/committees/revenuelaws/Homepage/index.html.

COMMITTEE PROCEEDINGS

The 2013 General Assembly enacted both of the Revenue Laws Study Committee legislative proposals: S.L. 2013-2, Unemployment Fund Solvency and Program Changes and S.L. 2013-414, Revenue Laws Technical, Clarifying, and Administrative Changes. The 2013 General Assembly also made substantial changes to the State's income and sales tax structure this past session in S.L. 2013-316, Tax Simplification and Reduction Act. The Committee spent time at each of its meetings this past interim looking at the policy changes made in the Tax Simplification and Reduction Act and discussing technical and administrative changes that needed to be made to improve the efficiency, simplicity, and clarity of the Act.

The Revenue Laws Study Committee met eight times after the adjournment of the Regular Session of the 2013-2014 biennium of the North Carolina General Assembly on July 26, 2013. Appendix B contains a copy of the Committee's agenda for each meeting. All of the materials distributed at the meetings may be viewed on the Committee's website.[3] In addition to studying the tax changes in the Tax Simplification and Reduction Act, the Committee considered a broad array of issues. It considers all proposed tax changes in light of general principles of tax policy and as part of an examination of the existing tax structure as a whole. The Committee considered 12 legislative proposals at its meeting on April 9, 2014. Those proposals have been incorporated into one recommendation for this report.

[3] http://www.ncleg.net/committees/revenuelaws

TAX SIMPLIFICATION AND REDUCTION

The General Assembly made substantial changes to the State's income and sales tax structure in S.L. 2013-316. The Tax Simplification and Reduction legislation broadened the income tax base and reduced the income tax rates. It expanded the sales tax base by eliminating some preferential sales tax exemptions and tax rates, adding service contracts and entertainment activity to the sales tax base, and moving the taxation of electricity and piped natural gas to the sales tax structure. The Act also eliminated the estate tax, effective January 1, 2013, and capped the excise tax on motor fuel at 37.5 cents per gallon from October 1, 2013, until June 30, 2015. The Committee discussed these changes at its October meeting.

The Tax Simplification and Reduction Act eliminated the estate tax, effective January 1, 2013. During the Committee's meeting on February 11, 2014, Mike Godwin on behalf of the NC Bar Association's Estate Planning and Fiduciary Law Section informed the Committee of a technical error in the statute imposing income tax on estates and trusts,[4] which is contained in Section 2.3 of the Legislative Proposal. Mr. Godwin also requested the Committee consider limiting or repealing the State's income tax on estates and trusts. North Carolina imposes income tax on a trust if a beneficiary of the trust is a resident of the State. Mr. Godwin told the Committee that North Carolina was among only five states that impose income tax based solely on the residency of a trust beneficiary and that the tax was under constitutional challenge in the NC Business Court (The Kimberly Rice Kaestner Trust v. NC Dep't of Revenue, 12 CVS 8740). The Committee did not pursue repealing or modifying the taxation of estates and trusts.

[4] G.S. 105-160.2.

The Tax Simplification and Reduction Act made the following changes to the individual tax laws, effective January 1, 2014:

- Eliminated the three-tier rate bracket and substituted a flat rate of 5.8% in 2014 and 5.75% thereafter.
- Increased the standard deduction amount from $6,000 to $15,000 for a married couple filing jointly.
- Retained the itemized deduction amount claimed on federal income tax return for charitable contributions.
- Limited the itemized deduction amount claimed on federal income tax return for mortgage interest and property taxes paid on real estate to $20,000.
- Enhanced child credit for AGI under $40,000 (MFJ) from $100 per child to $125 per child.
- Eliminated all other deductions, exemptions, and credits except as follows:
    - Income not allowed to be included in tax base by federal law or court action.
    - Social security income.
    - Interest on certain bond obligations.

The State requires income tax withholding from an individual's wage and salary. The amount of taxes withheld should approximate the individual's tax liability. To help taxpayers prepare for the individual tax law changes, the Department of Revenue required all employees to complete a new tax withholding Form NC-4. The purpose of Form NC-4 is to allow for a more accurate withholding amount. If too much income is withheld, a taxpayer will receive a refund of the excess tax paid when a tax return is filed at the end of the taxable year; this additional withholding is comparable to an interest-free loan to the State. If too little income is withheld, a taxpayer will owe taxes when a return is filed at the end of the taxable year. The Revenue Laws Committee discussed these tax changes and the Form NC-4 at its December meeting.

The Tax Simplification and Reduction Act made the following changes to the corporate income tax laws, effective January 1, 2014:

- Reduced the tax rate from 6.9% to 6% for 2014 and 5% for 2015. The legislation provided a trigger for possible rate reduction in 2016 to 4% and in 2017 to 3%.
- Eliminated all credits except the one for investing in major recycling facilities.
- Allowed existing tax credits that have a sunset date to sunset as scheduled, with the exception of the tax credit for research and development; the sunset for that credit was extended from January 1, 2014, to January 1, 2016.

The Tax Simplification and Reduction Act made many changes to the sales tax laws, effective January 1, 2014:

- Increased the rate on modular homes and manufactured homes from 2.5% and 2%/$300 cap respectively to 4.75%.
- Repealed the sales tax exemption for nutritional supplements sold by chiropractors, meals served in higher educational institution facilities, and newspapers.
- Repealed the gross receipts franchise tax on live entertainment and movies and included admission charges to a live event, a movie, and an attraction in the sales tax base.
- Expanded the sales tax base to include service contracts.

The Tax Simplification and Reduction Act made the following changes to the sales tax laws, effective July 1, 2014:

- Repeals the sales tax exemption for certain bakery items sold in a bakery thrift store.
- Repeals sales tax holiday for school items and Energy Star products.
- Requires farmers to meet an annual income threshold of $10,000 from farming activities to qualify for farm-related sales tax exemptions.
- Caps the State and local sales tax refund allowed to nonprofit entities at $45 million.

- Repeals the gross receipts franchise tax on electricity and the excise tax on piped natural gas and include the gross receipts derived from the sale of these two utilities in the sales tax base.

The Committee began discussing these tax law changes at its October meeting and continued to review them throughout the course of the interim. The Department of Revenue and the legislative staff worked closely with the taxpayers impacted by these changes to resolve questions and administrative concerns.

Modular Homes and Manufactured Homes

Retailers of modular and manufactured homes noted the substantial difference in the amount of tax liability incurred on the purchase of a modular or manufactured home. The Committee considered how stick-built homes are taxed: contractors pay State and local sales tax on the materials used to build the home and the person who purchases the home pays the contractor. The amount paid the contractor is based upon the cost of the materials used, the labor used to construct the home, and the profit recognized by the contractor. The manufacturer and modular home industry argued that the sales tax on these homes is imposed not only on the materials used to construct it, but also upon the labor involved and any profit realized by the retailer. The industry reports that the average material cost of a factory-built home is approximately 50% of the invoice price. The industry also noted that the typical factory-built home sale today involves more site work and the administration of the tax as it applies to site work and the home itself is confusing and difficult. The imposition of the tax did not concern the industry when it was low and capped, but the higher rate magnifies the concerns cited. In deference to these concerns, the Committee recommends that 50% of the sales price of a manufactured home and a modular home be exempt from sales tax. This change is contained in Part VIII of the Legislative Proposal.

Prepaid Meal Plans

The removal of the sales tax exemption for meals sold in a higher educational institutional facility subjected the meals to sales tax. The Committee learned that most colleges and universities offer prepaid meal plans and that the cost of those plans is bundled with tuition payments. Imposition of sales tax on these purchases raised questions about what the taxable transaction is and who is the responsible retailer is. The Committee worked with the schools, outside vendors, and the Department of Revenue to address these issues. The Committee's recommendation on the taxation of prepaid meals plans is found in Part IV of the Legislative Proposal.

Newspapers

Prior to the tax law change this session, sales tax applied differently to newspapers depending upon how they were sold. If a person purchased a newspaper over the counter, digitally, or by subscription, the sales tax applied; if a person purchased a newspaper through an independent carrier, a street vendor, or a vending machine, no tax applied because of the sales tax exemption. One purpose of the repeal of the sales tax exemption for newspapers was to treat the purchase of a similar product similarly. The Committee learned at its October meeting that although the General Assembly repealed the sales tax exemption for newspapers, newspapers sold through a vending machine were exempt in an amount equal to 50% of the sales price because of the vending machine exemption. The Committee recommends that the 50% sales tax exemption applicable to items purchased through a vending machine should not apply to newspapers. Section 8.3.(b) of Part VIII of the Legislative Proposal makes this change.

Admission Charges for an Entertainment Activity

Over the past two decades, the General Assembly authorized numerous committees to study the State's tax code and to recommend changes that would modernize it. Most reports recommended expanding the sales tax base to entertainment activities. Many other states already impose sales tax on these activities. S.L. 2013-316 expanded the sales tax base to include the gross receipts derived from admission charges to entertainment events. The Act exempted the following events from the tax: events at elementary and secondary schools, agricultural fairs, youth sporting events, State attractions, and limited nonprofit events. The Committee learned that the latter three exemptions appear to be causing confusion and will result in similar entertainments being taxed differently.

The Committee chairs appointed a subcommittee to consider the exemptions from the sales tax on admission charges. The subcommittee members were Senator Rucho, Chair, and Representatives Carney and Moffitt. The subcommittee considered the exemptions from the sales tax on admissions in other states and discussed the administrative difficulties of interpreting the current exemptions. It expressed concern that the exemptions create situations where similar entertainment events are taxed differently. The subcommittee stated a desire that similar entertainment events should be taxed similarly and recommended that the exemption for events sponsored and held at elementary and secondary schools be retained but that the other four exemptions be repealed. The subcommittee also expressed a concern about the administrative burdens of collecting and remitting the tax for very small nonprofit entities that do not have permanent staff and recommended that an event sponsored by a nonprofit entity be exempt if the entity does not have any paid staff and the entity does not compensate any person participating in the event.

In addition to the exemptions from the tax, taxpayers asked the Committee to address other implementation issues, such as the definition of an admission charge, the applicability of the tax to amenities, the consequence of a cancelled attraction, and the party responsible for collecting and remitting the tax. The Committee recommends legislative changes to address these issues in Part V of the Legislative Proposal.

Service Contracts

The Tax Simplification and Reduction Act expanded the sales tax to include the gross receipts derived from a service contract, including a service contract on a motor vehicle. At least 30 other states impose sales tax on service contracts. The Committee began its discussions of the implementation issues surrounding the expansion of the tax to this service at its October meeting. The Committee considered questions such as: Must the service contract be sold in conjunction with the property covered in the contract? Must the service be provided by the same person selling the property covered in the contract? Are charges for the renewal of a service contract subject to tax? Are periodic payments for a service contract subject to tax?

The Committee's stated that similar transactions should be taxed the same, and that clarity of understanding and ease of administration should be considered. The Department of Revenue and the legislative staff worked closely with taxpayers to resolve issues under the parameters given by the Committee. The Committee's recommendations related to the sales tax applicable to service contracts can be found in Part VI of the Legislative Proposal.

Farm Exemption Certificate

The Tax Simplification and Reduction Act imposed an income threshold a person must meet to qualify for a sales tax agricultural exemption certificate. Effective July 1,

2014, a person does not qualify for an agricultural exemption certificate unless the person has an annual gross income for the preceding taxable year[5] of at least $10,000 from farming operations. The farming community posed some questions about the implementation of the income threshold. The Committee looked at the following issues at its March meeting: How should the agricultural exemption certificate administrative process be revised? How are retailers expected to administer the new threshold requirements? How can the threshold accommodate fluctuations in farming income? The Committee's recommendation related to the imposition of the income threshold for an agricultural exemption certificate is in Part III of the Legislative Proposal.

Utility Taxes

At its February meeting the Committee heard presentations on changes to the taxation of utilities as part of the Tax Simplification and Reduction Act. Effective July 1, 2014, the Act repealed the gross receipts franchise tax on electricity and the excise tax on piped natural gas and included both items in the State sales tax base to tax them at the combined general rate of 7%. The Act also replaced the current tax-sharing of the franchise and excise tax revenues with cities with a distribution of part of the sales tax collected on these items. The Committee considered two issues related to these changes, the actions required of the Utilities Commission under the Act, and the effect of amended returns on the new distributions to the cities of the sales tax on electricity and piped natural gas.

Public utilities recover costs of their service from customers through rates approved by the Utilities Commission. Taxes are generally recovered through these rates. The franchise tax on electricity is one of the taxes recovered through rates. The

[5] The statute currently says "calendar year." The Department has requested that the term be changed to "taxable year." The bill draft makes this change

Act required the Utilities Commission to change rates charged by these utilities to reflect the tax changes in the Act. The Commission initiated a proceeding to examine all of the changes in the Act, and how these changes would impact utilities and ratepayers.

The new distributions to cities of the sales tax on electricity and piped natural gas are based on the distribution under the repealed franchise and excise taxes the last year those taxes were in effect. Utilities are allowed to file amended returns on the repealed taxes for up to three years. Amended returns filed on the repealed taxes can change both distributions under the repealed taxes and the amount to be distributed to cities under the new sales tax on electricity and piped natural gas.

Section 14.13(a) in Part XIV of the Legislative Proposal provides guidance to the Department on how to treat amended returns that change past and future distributions. First, it provides that any additional funds needed for increases to past distributions under the repealed taxes can be drawn from the sales tax revenue. Second, it creates a date certain for future distributions to be determined. The Department of Revenue will set the distributions for each fiscal year by September 15 using amended returns processed by the Department prior to July 31 of that year.

CORPORATE INCOME TAX CHANGES

The Committee considered the State's corporate income tax apportionment formula. Multistate corporations must apportion their income among the states in which they do business. There is a standard three-factor apportionment formula based upon equal weighting of the percentage of property located in a state, payroll paid in a state, and sales made in a state. North Carolina uses a double weighted sales factor where property and payroll are weighted at 25% each while sales are weighted twice. The Committee learned the new trend in corporate tax apportionment is an ever increasing weight upon the sales factor. Some states are moving to a single sales factor

apportionment formula. A single sales factor apportionment favors businesses that locate and employ people in a state and sell a product outside the state. North Carolina currently allows single sales factor apportionment for excluded corporations, public utilities, and qualified capital intensive corporations.

The Committee also looked at the difference between North Carolina's net economic loss (NEL) deduction for corporations and the federal net operating loss (NOL) deduction. A net loss deduction provides relief to corporations that have incurred economic misfortune. It is allowed during a period in which a company's allowable tax deductions are greater than its taxable income, resulting in a negative taxable income. A loss generally occurs when a company has incurred more expenses than revenues during the period.

The Committee appointed a subcommittee to determine whether North Carolina should replace its NEL with some form of a NOL. The subcommittee members were Representative Lewis, Chair, Senator Hartsell and Representative Blust. The subcommittee met twice and worked closely with the Department of Revenue and the interested parties. The key differences between a NOL and a NEL is that a NOL occurs when tax deductible expenses are more than taxable revenues, while a NEL occurs when tax deductible expenses are more than all income, including any income that is not subject to North Carolina corporate income tax. Also, a federal NOL may be carried back two years and carried forward 20 years while a NEL may only be carried forward for 15 years.

The subcommittee recommended that the State replace the NEL deduction with a State net loss deduction that is determined in a similar manner to the federal NOL. North Carolina is the only state that has a NEL. Shifting to a State net loss calculation will simplify and ease the administration of the State's corporate income tax laws. The

move is supported by the Department of Revenue and the interested parties. Part I of the Legislative Proposal contains this recommendation.

SALES TAX AND RETAILER-CONTRACTORS

For the second year in a row, this Committee has grappled with the sales tax dilemma posed by performance contractors. In 2012, the Department of Revenue presented on this complex area of law and, although it did not make a specific recommendation, it identified various options for consideration. The Committee did not take any action in anticipation that the issue would be addressed as part of the comprehensive tax reform efforts slated for the 2013 Session. However, this issue was not included in the tax reform measure and was back before the Committee during the interim.

This issue centers on the gray area where retail sales and performance contracts intersect. Under current law, retailers are required to collect and remit sales tax on retail sales of tangible personal property. Under a performance contract, the contractor agrees to furnish the necessary materials, labor, and expertise to accomplish the job; it is not a contract for the sale of specific items. Contractors are deemed to be the consumers or end users of the tangible personal property they use in fulfilling performance contracts and, as such, are liable for payment of the applicable tax.[6] This tax treatment reflects the underlying premise of sales tax, which is that it is intended to be a consumption tax on final goods and services. That is, the end user of the item purchased is the person who should pay the tax. While these rules may seem straightforward, it is not always clear who the end user is when a customer purchases an item from a home improvement store and enters into a contract with the store for the installation of the item in their

[6] The tax may not be added to the agreed-upon contract price as a separate charge on the invoice, but it must be included in the computation of the cost of the materials necessary to perform the contract.

home. For example, a retailer that sells a refrigerator or a television and offers installation of that property is clearly engaged in a retail sale. The retailer must collect sales tax on the item, but the installation service is exempt from sales tax as long as it is separately stated on the invoice at the time of sale. Conversely, a customer who enters into a performance contract does not owe sales tax on the property used to fulfill that contract, but rather the contractor owes sales or use tax on those items. A clear example of a performance contract would be a contract for the painting of a house or for cleaning services. The customer would not pay sales tax on the paint or the cleaning products used to complete those services. The interpretation problems most often arise with "retailer-contractors," like the major home improvement stores, that perform the installation of major fixtures that are permanently incorporated into real property, such as cabinetry and carpeting. The sale of an item whose fabrication and installation are more custom and permanent in nature begins to look less like a retail sale and more like a real property improvement. The difficulty lies in determining when that line has been crossed.

Over time, the Department has developed guidance through its technical bulletins, and the tax treatment is ultimately determined by looking at a number of factors, such as whether an item is sold with an installation agreement, the tenor of the agreement, if there is one, whether an item is pre-fabricated, whether an item is built on-site, and whether a specific quantity is stated in the agreement. Determining the tax consequences involves a complex and fact-specific analysis. In fact, the sale and installation the same item, such as carpet or cabinets, can have different tax treatment depending on who the seller is and how the transaction is structured.

This issue drew particular attention in 2009 when newspaper reports revealed a long-running dispute between Lowe's and the Department of Revenue on the

application of the law in this area. The report indicated that Lowe's was not collecting sales tax when it sold and subsequently installed items such as cabinets, flooring, and countertops. The Department's position is that these transactions are retail sales plus installation and that Lowe's should be collecting sales tax on the purchases but not the installation charges as long as those charges are separately stated on the customer's invoice. Lowe's position is that these transactions are performance contracts and, therefore, they are only required to pay the use tax because they are the user or consumer of that property and that the cost is factored into the contract price ultimately paid by the customer, but it is not a separately stated cost.

The current law provides little guidance as to what the correct interpretation is. The statutes do not define "contractor" or "performance contract" or speak to when the installation of tangible personal property constitutes a real property improvement. Sales tax applies to retail sales of tangible personal property but not to real estate improvements. A sale occurs when title or possession is transferred. When a contractor permanently affixes an item of tangible personal property to real estate, title and possession typically transfer upon installation. However, once the item is permanently affixed to real property, general principles of real estate law provide that the item is no longer tangible personal property but has transformed into a real property fixture. Therefore, when a homeowner obtains title or possession to the property, the property is real estate and, therefore, one could argue no retail sale of tangible personal property has occurred. Adding further confusion to the mix, North Carolina's definition of "retailer" includes the business of installing tangible personal property *regardless of whether it is permanently affixed to real property.* This definition suggests that all contractors are also retailers, which seems to conflict with other principles at play. Moreover, the Department's interpretation of whether a transaction is a retail sale or

performance contract varies depending on a number of different factors and does not necessarily hinge on whether an item is permanently affixed to real property.

After a staff presentation to the full Committee, the Co-Chairs appointed a subcommittee to continue work on the issue. The subcommittee members were Senator Tamara Barringer, Chair, Senator Rick Gunn, and Representative Bill Brawley. The subcommittee had one meeting at which interested parties were represented and had an opportunity to voice their concerns; the attendees included the Retail Merchants Association, representatives from Lowe's, Home Depot, and the Plumbing, Heating, and Cooling Contractors of NC, and the Department of Revenue. Andy Ellen, representing the Retail Merchants Association, gave a presentation highlighting the three-part test that is commonly used to determine when tangible personal property that is affixed to real property loses its identity as such and becomes a real property improvement. The three factors are: intent, expectation, and method. First is the intent of the property owner to have the item permanently and substantially improve the land. Second, would a purchaser of the property expect that the seller will leave the item behind? Third, would removal of the item cause significant damage to the property? Mr. Ellen advocated incorporating this test either into the statute directly or into its application.

During the Committee's examination of this issue, the consistent message from the retailers was that they do not have a preference as to how the items are taxed; rather, they just want clarity in the law so that retailers engaged in similar businesses are on a level playing field and so that similar transactions are taxed similarly, whether they are performed by a contractor or a retailer acting as a contractor. In developing the proposal, the subcommittee recognized that this issue is much broader than only that aspect of it affecting Lowe's and Home Depot and similar retailers, but given the lack of

statutory guidance and the inconsistent interpretations of the Department, the subcommittee opted for a proposal more limited in scope that represents a first step in bringing much-needed clarity and consistency to the law while acknowledging that additional legislation may be required in the future. Also, while consideration was given to recommending a proposal where the tax treatment would depend on whether a transaction involved a standard installation or a true performance contract where the price and details of the job are more custom in nature, the subcommittee, in consultation with the Co-Chairs, ultimately recommended a proposal that incorporates the real property improvement concept. In other words, if an item, once installed, loses its identity as tangible personal property and would likely be treated as a permanent part of the real estate under the principles of real estate law, then the contractor who installs that item is the consumer or final user of the item and is liable for payment of the tax. There was also considerable discussion about whether the proposal should contain a list of items to be treated as retail sales regardless of the nature of the installation. The Department supported the idea of a list because it would provide the clearest guidance to both the Department and the retailers. However, codifying a list of specific items in statute is generally disfavored because it presents a risk of unintentionally excluding items that were not contemplated that the time it was drafted, potentially raises interpretational questions about whether the list is exclusive or illustrative, and becomes outdated as new technology enters the marketplace. Ultimately, the Co-Chairs concluded that the best approach would be for the Department to develop, in consultation with the stakeholders, administrative guidance that identifies the types of items that become real property once installed in accordance with well-established principles of real estate law.

The thrust of this proposal is that it specifically provides that the general rate of tax applies to the sales price of tangible personal property sold to a real property contractor for use in improving or altering real property. This statement makes clear that a contractor is the end user of tangible personal property that ultimately becomes part of real property. The imposition would apply to all real property contractors, including retailers when they act as contractors. It defines a "real property contractor" as a person who contracts to furnish tangible personal property and the labor to install or apply that tangible personal property to real property. It defines a "retailer-contractor" as a person that acts as a real property contractor when it performs real property contracts and as a retailer when it sells tangible personal property. It further provides that a retailer-contractor may purchase materials exempt from tax and then accrue and remit tax when the materials are withdrawn from the inventory to use in fulfilling a real property contract. If the retailer-contractor subcontracts the installation, then the subcontractor would pay the tax on the items the subcontractor purchases to fulfill the contract. The second part of the proposal holds harmless retailers that have been following the law as interpreted by the Department, such as Home Depot, as well as retailers who have asserted that the Department's interpretation is inconsistent with existing statutes, such as Lowe's. The proposal would become effective January 1, 2015.

TAX LAW COMPLIANCE CHANGES

During the Committee's meeting on January 14, 2014, Charlie Helms, Director of the Collections Division, Department of Revenue, presented the Committee the following three legislative requests to aid tax collection:

- Allow out-sourcing of in-state cases to private collection agencies.
- Increase budget for locator service contracts.
- Subject ABC retail permits to tax compliance checks.

The Collections Division requested the authority to use private debt collection agencies to locate and contact delinquent taxpayers. The private debt collectors would not have any authority to use the forced collection procedures of the Department such as garnishment. After Committee discussion, the Committee did not move forward with the use of private debt collectors.

The Collections Division requested that ABC retail permittees be tax compliant as a prerequisite to renew a permit. The ABC Commission did not object to the request. The Committee approved a requirement a person file all State tax returns and pay all State taxes to receive and hold an ABC permit. State taxes must be collectable and finally determined to be due for the tax to block an ABC application. The requirement would closely follow the statute[7] requiring lottery retailers to file and pay all State taxes. Section 10.1 of the Legislative Proposal incorporates this proposal.

The Collections Division requested the Committee increase the funding for locator services by authorizing increased expenditures from the collection assistance fee. G.S. 105-243.1 imposes a 20% collection assistance fee on overdue tax debts after 90 days. The collection assistance fee is credited to a special account and must be applied to the costs of collecting overdue tax debts. The Department of Revenue uses locator services through contracts with private data services to identify current addresses for taxpayers. The Committee voted in favor of increasing the authorization from $150,000 to $500,000 annually on taxpayer locater services to be paid from the collection assistance fee account. Section 10.1 of the Legislative Proposal authorizes the use of $500,000 for locator services.

[7] G.S. 18C-141.

PRIVILEGE LICENSE TAX CHANGES

The privilege license tax may be one of the most studied systems of taxation by this Committee, which has reached the same conclusion every time—that it is also one of the most problematic. In 1996, after four previous studies,[8] this Committee recommended repealing virtually all of the State-level privilege license taxes. The following quote made during a 1996 briefing on this issue is as apt today as it was then and reflects the collective conclusion of the current Committee members:

> *Privilege license taxes do not conform to any generally accepted principles or philosophies of taxation...There is no generally accepted principle of taxation that calls for professionals and businesses to be taxed in compensation for the 'privilege' of doing business in the state...The best approach for achieving equity among businesses is to limit taxes to a reasonable, nominal amount applied uniformly rather than trying to achieve equity according to size or profitability.*[9]

At the time, the Committee addressed only the State privilege taxes, anticipating that the local privilege tax system would be addressed in a second stage of reform. Eighteen years and four additional studies[10] later, this Committee is recommending a substantial overhaul to the local privilege license tax system.

Over 300 cities levy a privilege license tax generating a cumulative total of $62 million; 20 cities collect more than $500,000 from the levy. At the January 14, 2014, meeting, Christopher McLaughlin, Assistant Professor of Public Law and Government at the UNC School of Government, provided the Committee with an overview of the local privilege license tax system and an analysis of its deficiencies. Historically, this system of taxation has been considered an outmoded, inefficient, and arbitrary method of raising revenue largely because it places a tax burden on a limited number of

---

[8] 1956 Tax Study Commission, 1966 Tax Study Commission, 1968 Tax Study Commission, and 1992 Revenue Laws Study Committee.

[9] Comments by Charles D. Liner at the October 16, 1992 Revenue Laws Study Committee meeting.

[10] 2004, 2008, 2012, and 2014.

businesses. Through Mr. McLaughlin's presentation, the Committee heard once again how the system is archaic, inconsistent, and arbitrary. The system is archaic because it is based on references to repealed statutes, which are essentially "trapped in time" and cannot be changed. Specifically, the repealed statutes refer to monetary caps that have never been adjusted for inflation and to businesses that sell items like record players, tape cartridges, and bagatelle tables. The Committee heard that the law is often applied inconsistently because local business license officers have different, yet valid, interpretations of how to apply the repealed statutes. The system is arbitrary because there is no rationale for exempting some businesses altogether, subjecting some to caps, and subjecting others to an unlimited amount of tax. Some cities, like Durham and Charlotte, base privilege tax on gross receipts resulting in tax bills of thousands of dollars. Given these characteristics, the administration of privilege license taxes frequently proves to be a source of confusion and frustration for local governments and taxpayers alike.

Following Mr. McLaughlin's presentation, the Committee heard from Paul Meyer, Director of Governmental Affairs with the North Carolina League of Municipalities, and Robin Rose, Deputy Chief Financial Officer for the City of Raleigh. Mr. Meyer acknowledged the problems with this tax. Specifically, he referenced the lack of uniformity, the absence of definitions, the fact that out-of-town businesses are often treated differently or are potentially subject to double taxation, and the use of a gross receipts schedule with no cap. He also pointed out that there are only two taxes that a city has authority to levy: the property tax and the privilege tax. As such, a number of cities have become reliant on the tax as a source of revenue. Mr. Meyer mentioned that this issue is among the League's legislative priorities and that it is willing to work with the Retail Merchants' Association to help craft a fairer, simpler, and more

comprehensible system while recognizing the revenue needs of cities which provide many services necessitated by the businesses taxed.

Based on her experience with the administration of Raleigh's privilege license tax, Ms. Rose offered some practical insight for the Committee's consideration. She stated that many small towns do not levy the tax because the revenue is not worth the cost of administration in light of the complexity of the current law. She also pointed out that, in Raleigh, 80% of licensed businesses pay $500 or less; among those, 50% pay $50 or less. One of the main complaints that she hears from businesses are the inequities among businesses because of the arbitrary exemptions and caps.

Next, the Committee heard from Andy Ellen, President and General Counsel, NC Retail Merchants' Association, and three business owners, Lynn Ford of Ford's Produce, Dick Harlow of Dick Broadcasting, and Mack McLamb of Carlie C's grocery store. The comments centered on the inequities and the substantial increase in tax faced by many businesses because of cities that have transitioned to a gross receipts schedule or increased their existing cap. Many businesses went from having a $50 privilege tax bill in one year to having one for thousands of dollars the next. For example, Mr. McLamb shared that his annual privilege license tax represents 6% of his business' income. Mr. McLamb has on previous occasions expressed concern that a gross receipts system punishes those businesses that have high receipts but a low profit margin.

In at least two of the Committee's meetings, the members engaged in prolonged discussion of this topic consistently raising concerns about the inequities of the tax and expressing displeasure at the abuses committed by some cities with unlimited or exorbitant gross receipts' schedules. A number of members expressed support for an outright repeal of the tax. Supporters of the proposal view it as the next step in the tax reform process creating a simpler and fairer tax. On the other side of the issue, some

members expressed concern that cities would have to raise property taxes if it passes without a way to make up for lost revenue. There was also discussion that cities would not be able to collect from all businesses.

Part XII of the Legislative Proposal would repeal the cities' current broad authority[11] and substitute authority to levy a flat tax capped at $100 per business location. Under existing law, a business is subject to the tax if it "carries on" business within a city. Under the proposal, a business must have a physical location, whether temporary or permanent, within a city's limits in order to be subject to the tax. A single business may have multiple locations and multiple businesses may operate from a single location.

This proposal also eliminates the multitude of restrictions and caps on various types of trades, businesses, and professions that exist either by virtue of the repealed Schedule B or existing State privilege license tax statutes. Currently, cities are prohibited from levying a privilege license tax on certain professionals who are taxed at the State level, such as attorneys, physicians, engineers, real estate brokers, and home inspectors. This proposal removes the restriction but limits the local tax to the business entity that employs the individual or with whom the individual is otherwise affiliated. Other businesses that cities are currently prohibited from taxing include banks, private protective services, burglar alarm dealers, household appliance dealers, and office equipment dealers. These restrictions are removed. However, cities would still be prohibited from levying any license, franchise, privilege, or business taxes on the following businesses because cities receive a share of sales tax revenue levied on these

[11] G.S. 160A-211(a), the subsection that authorizes cities to levy a privilege license tax, was inadvertently repealed in Section 58(b) of S.L. 2013-414. The repeal was a drafting error as evidence by the fact that Section 58(d) of that same act amends the same subsection and leaves the remainder of the statute intact. Section 12.1 of this proposal reenacts the provision to correct the error.

businesses: piped natural gas, telecommunications, video programming, and electricity. 501(c)(3)s are also excluded from the definition of business and would not be subject to the tax.

Approximately 64 types of businesses are subject to a cap on the amount of tax that a city may impose. Examples of businesses whose rate is capped at less than $100 include: amusements, $25; collection agencies, $50; peddlers of farm products, $25; contractors, $10; restaurants, $42.50; barbershops & beauty parlors, $2.50 per person employed; firearms dealers, $50; auto dealers, $25. These caps are removed. The proposal also repeals county authority to levy a privilege tax. County authority is much more limited. Only 37 counties currently levy the tax generating less than $500,000 cumulatively. The proposal would have an estimated fiscal impact of $11.4 to $24.6 million. The specific impact would depend upon whether each city opts to levy the maximum tax and whether they would be able to collect from all eligible businesses. The proposal would become effective July 1, 2015.

TAX & TAG TOGETHER AND LICENSE PLATE AGENTS

At its meeting on December 10, 2013, the Committee heard a presentation on the Tax & Tag Together program. In September, the State began implantation the Tax & Tag Together program, a combined system for motor vehicle registration renewal and property tax collection. Under the new program, the motor vehicle owner will receive one bill, and make one payment for both property taxes and vehicle registration renewal.

In order to provide that vehicle registration and renewal may be issued throughout the State, the Division of Motor Vehicles (DMV) enters into commission contracts with license plate agents (LPAs). The LPAs are compensated on a per transaction basis. Under the Tax & Tag Together program, the LPAs are now collecting

the property tax on motor vehicles at the time of vehicle registration. S.L. 2013-372 provided increased compensation for the new duties required of LPAs under the Tax & Tag Together program.

At the December meeting, the Chairs of the Committee appointed a subcommittee to study the changes in S.L. 2013-372, and determine the appropriate compensation for LPAs to collect the property tax on motor vehicles. S.L. 2013-372 provided that per compensation rate for the collection of property tax would be set at a transitional rate of $1.06 per transaction for the first six months of the program. The subcommittee met twice, and recommended the full Committee adopt a legislative proposal to further increase the compensation of LPAs.

Part XIII of the Legislative Proposal permanently sets the LPA transaction rate for the collection of property tax under the Tax & Tag Together program at the transitional rate of $1.06 per transaction. The proposal provides that the transitional rate will apply to the collection of property taxes with registration renewals for the entire 2013 fiscal year and clarifies that the $1.06 rate will apply to all transactions where an LPA collects property tax, effective July 1, 2014.

TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES

At the March 12 and April 9 meetings, the Committee considered technical and administrative changes to the excise tax statutes, recommended by the Department of Revenue and taxpayers. These changes may be found in Part XIV of the Legislative Proposal.

At the April 9 meeting, the Committee was presented with two bill drafts: one containing technical changes and one containing administrative and clarifying changes. Most of the changes in these two bill drafts were recommended by the Department of

Revenue and taxpayers. These changes may be found in Part XIV of the Legislative Proposal.

TAX ADMINISTRATION

During the Committee's meeting on February 11, 2014, Jeff Epstein, Chief Operating Officer, Department of Revenue presented the Committee an update on the computer modernization program, the Tax Information Management System (TIMS). The TIMS implementation was designed to replace the current Integrated Tax Administration System (ITAS) that has been operational since October, 1994. ITAS currently supports 12 tax schedules that account for at least 95% of all taxes collected by the Department of Revenue.

The Department of Revenue entered a series of contracts and amendments with CGI Technologies and Solutions Inc. (CGI) to implement TIMS. Effective January 10, 2014, the Department of Revenue and CGI signed an agreement terminating their relationship. The Department of Revenue told the Committee that the TIMS system was processing only non-ITAS tax schedules and could not process the largest tax schedules, including income tax. However, the TIMS system was successful in identifying over $300 million in unpaid taxes.

For TIMS, the Department of Revenue paid CGI $63,845,388 through December 31, 2013 plus an additional $22,287,081 was spent on internal costs. The final CGI payment for terminating the contract was estimated to be $5 million. The Department of Revenue plans to rely on the 20-year-old legacy system, ITAS, until a new replacement program can be implemented.

JOB DEVELOPMENT GRANT INCENTIVES

The Tax Simplification and Reduction Act eliminated most of the tax credits used to incent economic development in favor of a more attractive tax structure: lower tax

rates for all business taxpayers, a more simple tax structure, a State net loss deduction recommended by this Committee, and other general tax changes. Besides the tax code, North Carolina has grant programs to incent economic development. The Committee heard a presentation at its March 12, 2014 meeting on two of the key programs used in economic development: Job Development Investment Grants (JDIG) and One North Carolina Fund (One NC) awards.

The JDIG program is designed to stimulate economic activity and create new jobs by providing a discretionary incentive that offers sustained annual grants directly to new and expanding businesses statewide, measured against a percentage of withholding taxes (10% to 75%) paid by new employees. It was created in 2002 and the first grants were awarded in 2003. The program is scheduled to sunset on January 1, 2016.

Each JDIG project must meet eligibility criteria and be competitive with other states/countries. The grant must be necessary for the company to locate or expand in North Carolina. Each project must also pass an economic modeling test to demonstrate a positive net impact to the State. Finally, the grant must be provided to a business other than a sports team (except motor sports racing) and it must create a minimum number of jobs based on the tier location.

The total amount paid out for all JDIG grants in any one year cannot exceed $15 million.[12] The maximum length per project is 12 years, so the maximum payout for projects awarded in any given year is $180 million (12 years $15 million). If Commerce fully utilized the permissible liability caps and companies performed at maximum levels, the JDIG program would have cost $2.7 billion. The actual cost of the program

[12] S.L. 2013-360 modified liability to be $22.5 million for FY 2013-15 Biennium and $7.5 million for 7/1/15 to 12/31/15.

will be less since liability caps have not been maximized, which occurs for a number of reasons, including: Commerce underutilizing the liability cap during a given calendar year, JDIG projects being terminated, and companies not performing at maximum contract levels. In some cases, projects move or otherwise fail to maintain minimum eligibility criteria and are subject to clawback provisions to recoup grant payments.

The General Assembly provides the JDIG program with a recurring appropriation of $63 million (as of FY 2014-15), which the Office of State Budget and Management cash flows to Commerce for disbursement to companies. Appropriations are adjusted based on the Commerce Department's Annual Funding Study.

A second discretionary grant program is the One North Carolina Fund (One NC). This fund provides grants to local governments for assistance in the recruitment, expansion or retention of new and existing businesses. One NC awards require a matching grant from a unit of local government. The companies receiving grants must meet the local wage standard and be looking to move or expand to another region.

One NC grants can be used for the installation and purchase of equipment; structural repairs, improvements or renovations of existing buildings to be used for expansion; and construction or improvements to new or existing water, sewer, gas or electric utility distribution lines, or equipment for existing buildings (new buildings are eligible for manufacturing and industrial operations).

The total amount committed to One NC awards in a single biennium cannot exceed $28 million. This program is also cash flowed by the Office of State Budget and Management and receives a $9 million recurring appropriation, which is adjusted according to the Commerce Department's Annual Funding Study.

COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

The Revenue Laws Study Committee makes the following recommendation to the 2014 General Assembly. The proposal is followed by an explanation and, if it has a fiscal impact, a fiscal memorandum, indicating any anticipated revenue gain or loss resulting from the proposal.

1. Omnibus Tax Law Changes.

LEGISLATIVE PROPOSAL

AN ACT TO AMEND THE REVENUE LAWS, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.

LEGISLATIVE PROPOSAL #1

A RECOMMENDATION OF THE REVENUE LAWS STUDY COMMITTEE
TO THE 2014 REGULAR SESSION OF THE 2013 GENERAL ASSEMBLY

AN ACT TO AMEND THE REVENUE LAWS AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.

SHORT TITLE: Omnibus Tax Law Changes.

PRIMARY SPONSORS: Representatives Howard, W. Brawley, Lewis, and Setzer

---

BRIEF OVERVIEW: This legislative proposal makes various tax law changes recommended by the Revenue Laws Study Committee.

FISCAL IMPACT: See Fiscal Analysis Memorandum

EFFECTIVE DATE: Except as otherwise provided, this proposal would become effective when it becomes law.

A copy of the proposed legislation and a bill analysis begin on the next page.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

H D

HOUSE DRH40127-SVxz-22A* (04/15)

Short Title: Omnibus Tax Law Changes. (Public)

Sponsors: Representatives Howard, W. Brawley, Lewis, and Setzer (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND THE REVENUE LAWS, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE.

The General Assembly of North Carolina enacts:

PART I. DEDUCTION FOR STATE NET LOSS

SECTION 1.1.(a) G.S. 105-130.5(b) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(4) ~~Losses in the nature~~ Any unused portion of a net economic loss as allowed under G.S. 105-130.8A(e). ~~losses sustained by the corporation in any or all of the 15 preceding years pursuant to the provisions of G.S. 105-130.8. A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable net economic loss only from total income allocable to this State pursuant to the provisions of G.S. 105-130.8.~~This subdivision expires for taxable years beginning on or after January 1, 2030.

(4a) A State net loss as allowed under G.S. 105-130.8A. A corporation may deduct its allocable and apportionable State net loss only from total income allocable and apportionable to this State.

...."

SECTION 1.1.(b) G.S. 105-130.8 is repealed.

SECTION 1.1.(c) Part 1 of Article 4 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-130.8A. Net loss provisions.**

(a) State Net Loss. – A taxpayer's State net loss for a taxable year is the amount by which allowable deductions for the year, other than prior year losses, exceed gross income under the Code for the year adjusted as provided in G.S. 105-130.5. In the case of a corporation that has income from business activity within and without this State, the loss must be allocated and apportioned to this State in the year of the loss in accordance with G.S. 105-130.4.

(b) Deduction. – A taxpayer may carry forward a State net loss the taxpayer incurred in a prior taxable year and deduct it in the current taxable year, subject to the limitations in this subsection:

(1) The loss was incurred in one of the preceding 15 taxable years.

(2) Any loss carried forward is applied to the next succeeding taxable year before any portion of it is carried forward and applied to a subsequent taxable year.

(c) Mergers and Acquisitions. – The Secretary must apply the standards contained in regulations adopted under sections 381 and 382 of the Code in determining the extent to which a loss survives a merger or an acquisition.

(d) Administration. – A taxpayer claiming a deduction under this section must maintain and make available for inspection by the Secretary all records necessary to determine and verify the amount of the deduction. The Secretary or the taxpayer may redetermine a loss originating in a taxable year that is closed under the statute of limitations for the purpose of determining the amount of loss that can be carried forward to a taxable year that remains open under the statute of limitations.

(e) Net Economic Loss Carryforward. – For taxable years beginning before January 1, 2015, a taxpayer is allowed a net economic loss as calculated under G.S. 105-130.8. In determining and verifying the amount of a net economic loss incurred or carried forward for taxable years beginning before January 1, 2015, the provisions of G.S. 105-130.8 apply. Any unused portion of a net economic loss carried forward to taxable years beginning on or after January 1, 2015, is administered in accordance with this section. This subsection expires for taxable years beginning on or after January 1, 2030."

SECTION 1.1.(d) This Part becomes effective for taxable years beginning on or after January 1, 2015.

PART II. OTHER INCOME TAX CHANGES

SECTION 2.1.(a) G.S. 105-130.5B reads as rewritten:

"(c) Section 179 Expense. – For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code as of January 2, 2013. A taxpayer who places section 179 property in service during a taxable year listed in the table below must add to the taxpayer's federal taxable income eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code exceeds the dollar and investment limitation listed in the table below for the taxable year.

A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

Taxable Year of 85% Add-Back	**Dollar Limitation**	**Investment Limitation**
2010	$250,000	$800,000
2011	$250,000	$800,000
2012	$250,000	$800,000
2013	$25,000	~~$125,000~~$200,000

...

(e) Bonus Asset Basis. – In the event of an actual or deemed transfer of an asset occurring on or after January 1, 2013, wherein the tax basis of the asset carries over from the transferor to the transferee for federal income tax purposes, the transferee must add any remaining deductions allowed under subsection (a) of this section to the basis of the transferred asset and depreciate the adjusted basis over any remaining life of the asset. Notwithstanding the provisions of subsection (a) of this section, the transferor is not allowed any remaining future bonus depreciation deductions associated with the transferred asset.

(f) Prior Transactions. – For any transaction meeting both the requirements of subsection (e) of this section prior to January 1, 2013, and the conditions of this subsection, the transferor and transferee can make an election to make the basis adjustment allowed in that subsection on the transferee's 2013 tax ~~return, to the extent that the~~ return. If the asset has been disposed of or has no remaining useful life on the books of the transferee, the remaining bonus depreciation deduction may be allowed on the transferee's 2013 tax return. For this subsection to apply, the following conditions must be met:

(1) The transferor has not taken the bonus depreciation deduction on a prior ~~return and provided that the~~ return.

(2) The transferor certifies in writing to the transferee that the transferor will not take any remaining deductions allowed under subsection (a) of this section for tax years beginning on or after January 1, 2013, for depreciation associated with the transferred asset."

SECTION 2.1.(b) G.S. 105-134.6A reads as rewritten:

"(c) Section 179 Expense. – For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code as of January 2, 2013. A taxpayer who places section 179 property in service during a taxable year listed in the table below must add to the taxpayer's federal taxable income or adjusted gross income, as appropriate, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code exceeds the dollar and investment limitation listed in the table below for that taxable year. For taxable years before 2012, the taxpayer must add the amount to the taxpayer's federal taxable income. For taxable year 2012 and after, the taxpayer must add the amount to the taxpayer's adjusted gross income.

A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

Taxable Year of 85% Add-Back	**Dollar Limitation**	**Investment Limitation**
2010	$250,000	$800,000
2011	$250,000	$800,000
2012	$250,000	$800,000
2013	$25,000	~~$125,000~~$200,000

...

(e) Bonus Asset Basis. – In the event of an actual or deemed transfer of an asset occurring on or after January 1, 2013, wherein the tax basis of the asset carries over from the transferor to the transferee for federal income tax purposes, the transferee must

add any remaining deductions allowed under subsection (a) of this section to the basis of the transferred asset and depreciate the adjusted basis over any remaining life of the asset. Notwithstanding the provisions of subsection (a) of this section, the transferor and any owner in a transferor are not allowed any remaining future bonus depreciation deductions associated with the transferred asset. This subsection applies only to the extent that each transferor or owner in a transferor that added bonus depreciation to its federal taxable income or adjusted gross income associated with the transferred asset certifies in writing to the transferee, that the transferor or owner in a transferor will not take any remaining future bonus depreciation deduction associated with the transferred asset.

(f) Prior Transactions. – For any transaction meeting both the requirements of subsection (e) of this section prior to January 1, 2013, and the conditions of this subsection, the transferor and transferee can make an election to make the basis adjustment allowed in that subsection on the transferee's 2013 tax ~~return, to the extent that the~~ return. If the asset has been disposed of or has no remaining useful life on the books of the transferee, the remaining bonus depreciation deduction may be allowed on the transferee's 2013 tax return. For this subsection to apply, the following conditions must be met:

(1) The transferor ~~and~~ or any owner in a transferor has not taken the bonus depreciation deduction on a prior ~~return and provided that the~~ return.

(2) The transferor is not allowed any remaining future bonus depreciation deductions associated with the transferred asset and each transferor or owner in a transferor certifies in writing to the transferee that the transferor or owner in a transferor will not take any remaining deductions allowed under subsection (a) of this section for tax years beginning on or after January 1, 2013, for depreciation associated with the transferred asset.

(3) The amount of the basis adjustment under this subsection is limited to the total remaining future bonus depreciation deductions forfeited by the transferor and any owner in the transferor at the time of the transfer.

...

(h) Definitions. – ~~For purposes of this section, a "transferor" is an~~ The following definitions apply in this section:

(1) Transferor. – An individual, partnership, S Corporation, limited liability company, or an estate or trust that does not fully distribute income to its ~~beneficiaries, and an "owner in a transferor" is a~~ beneficiaries.

(2) Owner in a transferor. – One or more of the following of a transferor:

a. A partner, shareholder, ~~member,~~ or member.

b. A ~~or~~ beneficiary subject to tax under Part 2 or 3 of Article 4 of this ~~Chapter, of a transferor.~~Chapter."

SECTION 2.1.(c) G.S. 105-153.6 reads as rewritten:

"(c) Section 179 Expense. – For purposes of this subdivision, the definition of section 179 property has the same meaning as under section 179 of the Code as of January 2, 2013. A taxpayer who places section 179 property in service during a taxable

year listed in the table below must add to the taxpayer's federal taxable income or adjusted gross income, as appropriate, eighty-five percent (85%) of the amount by which the taxpayer's expense deduction under section 179 of the Code exceeds the dollar and investment limitation listed in the table below for that taxable year. For taxable years before 2012, the taxpayer must add the amount to the taxpayer's federal taxable income. For taxable year 2012 and after, the taxpayer must add the amount to the taxpayer's adjusted gross income.

A taxpayer is allowed to deduct twenty percent (20%) of the add-back in each of the first five taxable years following the year the taxpayer is required to include the add-back in income.

Taxable Year of 85% Add-Back	**Dollar Limitation**	**Investment Limitation**
2010	$250,000	$800,000
2011	$250,000	$800,000
2012	$250,000	$800,000
2013	$25,000	~~$125,000~~$200,000

...

(e) Bonus Asset Basis. – In the event of an actual or deemed transfer of an asset occurring on or after January 1, 2013, wherein the tax basis of the asset carries over from the transferor to the transferee for federal income tax purposes, the transferee must add any remaining deductions allowed under subsection (a) of this section to the basis of the transferred asset and depreciate the adjusted basis over any remaining life of the asset. Notwithstanding the provisions of subsection (a) of this section, the transferor and any owner in a transferor are not allowed any remaining future bonus depreciation deductions associated with the transferred asset. This subsection applies only to the extent that each transferor or owner in a transferor that added bonus depreciation to its federal taxable income or adjusted gross income associated with the transferred asset certifies in writing to the transferee, that the transferor or owner in a transferor will not take any remaining future bonus depreciation deduction associated with the transferred asset.

(f) Prior Transactions. – For any transaction meeting both the requirements of subsection (e) of this section prior to January 1, 2013, and the conditions of this subsection, the transferor and transferee can make an election to make the basis adjustment allowed in that subsection on the transferee's 2013 tax ~~return, to the extent that the~~ return. If the asset has been disposed of or has no remaining useful life on the books of the transferee, the remaining bonus depreciation deduction may be allowed on the transferee's 2013 tax return. For this subsection to apply, the following conditions must be met:

(1) The transferor ~~and~~ or any owner in a transferor has not taken the bonus depreciation deduction on a prior ~~return and provided that the~~ return.

(2) The transferor is not allowed any remaining future bonus depreciation deductions associated with the transferred asset and each transferor or owner in a transferor certifies in writing to the transferee that the transferor or owner in a transferor will not take any remaining deductions allowed under subsection (a) of this section for tax years

beginning on or after January 1, 2013, for depreciation associated with the transferred asset.

(3) The amount of the basis adjustment under this subsection is limited to the total remaining future bonus depreciation deductions forfeited by the transferor and any owner in the transferor at the time of the transfer.

...

(h) Definitions. – ~~For purposes of this section, a "transferor" is an~~ The following definitions apply in this section:

(1) Transferor. – An individual, partnership, S Corporation, limited liability company, or an estate or trust that does not fully distribute income to its ~~beneficiaries, and an "owner in a transferor" is a~~ beneficiaries.

(2) Owner in a transferor. – One or more of the following of a transferor:

a. A partner, shareholder, ~~member,~~ or member.

b. A ~~or~~ beneficiary subject to tax under Part 2 or 3 of Article 4 of this ~~Chapter, of a transferor.~~Chapter."

SECTION 2.1.(d) Subsection (c) of this section is effective for taxable years beginning on or after January 1, 2014. The remainder of this section is effective for taxable years beginning on or after January 1, 2013.

SECTION 2.2.(a) G.S. 105-153.5(a) reads as rewritten:

"**§ 105-153.5. Modifications to adjusted gross income.**

(a) Deduction Amount. – In calculating North Carolina taxable income, a taxpayer may deduct from adjusted gross income either the standard deduction amount provided in subdivision (1) of this subsection or the itemized deduction amount provided in subdivision (2) of this subsection that the taxpayer claimed under the Code. ~~In the case of a married couple filing separate returns, a taxpayer may not deduct the standard deduction amount if the taxpayer or the taxpayer's spouse claims the itemized deductions amount:~~

(1) Standard deduction amount. – The standard deduction amount is zero for a person who is not eligible for a standard deduction under Section 63 of the Code. For all other taxpayers, the standard deduction ~~An~~ amount is equal to the amount listed in the table below based on the taxpayer's filing status:

Filing Status	**Standard Deduction**
Married, filing jointly	$15,000
Head of Household	12,000
Single	7,500
Married, filing separately	7,500.

(2) Itemized deduction amount. – An amount equal to the sum of the items listed in this subdivision. The amounts allowed under this subdivision are not subject to the overall limitation on itemized deductions under section 68 of the Code:

a. The amount allowed as a deduction for charitable contributions under section 170 of the Code for that taxable year.

b. The amount allowed as a deduction for interest paid or accrued during the taxable year under section 163(h) of the Code with respect to any qualified residence plus the amount claimed by the taxpayer as a deduction for property taxes paid or accrued on real estate under section 164 of the Code for that taxable year. The amount allowed under this sub-subdivision may not exceed twenty thousand dollars ($20,000). For spouses filing as married filing separately or married filing jointly, the total mortgage interest and real estate taxes claimed by both spouses combined may not exceed twenty thousand dollars ($20,000). For spouses filing as married filing separately with a joint obligation for mortgage interest and real estate taxes, the deduction for these items is allowable to the spouse who actually paid them. If the amount of the mortgage interest and real estate taxes paid by both spouses exceeds twenty thousand dollars ($20,000), these deductions must be prorated based on the percentage paid by each spouse. For joint obligations paid from joint accounts, the proration is based on the income reported by each spouse for that taxable year."

SECTION 2.2.(b) This section is effective for taxable years beginning on or after January 1, 2014.

SECTION 2.3.(a) G.S. 105-160.2 reads as rewritten:

"**§ 105-160.2. Imposition of tax.**

The tax imposed by this Part applies to the taxable income of estates and trusts as determined under the provisions of the Code except as otherwise provided in this Part. The taxable income of an estate or trust is the same as taxable income for such an estate or trust under the provisions of the Code, adjusted as provided in ~~G.S. 105-134.6 and G.S. 105-134.6A,~~ G.S. 105-153.5 and G.S. 105-153.6, except that the adjustments provided in ~~G.S. 105-134.6 and G.S. 105-134.6A~~ G.S. 105-153.5 and G.S. 105-153.6 are apportioned between the estate or trust and the beneficiaries based on the distributions made during the taxable year. The tax is computed on the amount of the taxable income of the estate or trust that is for the benefit of a resident of this State, or for the benefit of a nonresident to the extent that the income (i) is derived from North Carolina sources and is attributable to the ownership of any interest in real or tangible personal property in this State or (ii) is derived from a business, trade, profession, or occupation carried on in this State. For purposes of the preceding sentence, taxable income and gross income is computed subject to the adjustments provided in ~~G.S. 105-134.6 and G.S. 105-134.6A.~~ G.S. 105-153.5 and G.S. 105-153.6. The tax on the amount computed above is at the rates levied in ~~G.S. 105-134.2(a)(3).~~ G.S. 105-153.7. The fiduciary responsible for administering the estate or trust shall pay the tax computed under the provisions of this Part."

SECTION 2.3.(b) This section is effective for taxable years beginning on or after January 1, 2014.

PART III. AGRICULTURAL EXEMPTION CERTIFICATE

SECTION 3.1.(a) G.S. 105-164.13E reads as rewritten:

"**§ 105-164.13E. Exemption for qualifying farmers.**

A qualifying farmer is a person who has an annual gross income for the preceding taxable year of ten thousand dollars ($10,000) or more from farming operations or who has an average annual gross income for the three preceding taxable years of ten thousand dollars ($10,000) or more from farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758. A qualifying farmer may apply to the Secretary for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires when a person fails to meet the income threshold for three consecutive years or ceases to engage in farming operations. ~~The~~ The following tangible personal property, digital property, and services are exempt from sales and use tax if purchased by a qualifying farmer and for use by the farmer in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or ~~animals. A qualifying farmer is a farmer who has an annual gross income of ten thousand dollars ($10,000) or more from farming operations for the preceding calendar year and includes a dairy operator, a poultry farmer, an egg producer, a livestock farmer, a farmer of crops, and a farmer of an aquatic species, as defined in G.S. 106-758:~~animals:

...."

SECTION 3.1.(b) G.S. 105-164.28A(a) reads as rewritten:

"(a) Authorization. – The Secretary may require a person who purchases an item that is exempt from tax or is subject to a preferential rate of tax depending on the status of the purchaser or the intended use of the item to obtain an exemption certificate from the Department to receive the exemption or preferential rate. ~~An~~ The Department must issue a preferential rate or use-based exemption number to a person who qualifies for the exemption or preferential rate. The number must be included on the person's certificate of exemption. A person who no longer qualifies for a preferential rate or use-based exemption number must notify the Secretary within 30 days to cancel the number.

An exemption certificate issued by the purchaser authorizes a retailer to sell an item to the holder of the certificate and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A person who no longer qualifies for an exemption certificate must give notice to each seller that may rely on the exemption certificate on or before the next purchase. A person who purchases an item under an exemption certificate is liable for any tax due on the ~~sale~~ purchase if the Department determines that the person is not eligible for the ~~certificate.~~ exemption certificate or if the person purchased items that do not qualify for an exemption under the exemption certificate. The liability is relieved when the seller obtains the purchaser's name, address, type of business, reason for exemption, and exemption number in lieu of obtaining an exemption certificate."

SECTION 3.1.(c) A person who has an agricultural exemption certificate number issued prior to July 1, 2014, that meets the requirements of G.S. 105-164.13E for a qualifying farmer should apply for a new agricultural exemption certificate number before July 1, 2014, for use for qualifying purchases made on or after October 1, 2014. A person that meets the requirements of G.S. 105-164.13E for a qualifying farmer and who has an agricultural exemption certificate number issued prior to July 1, 2014, may

continue to use that agricultural exemption certificate number for qualifying purchases made prior to October 1, 2014.

SECTION 3.1.(d) A person who has an agricultural exemption certificate number issued before July 1, 2014, that does not meet the requirements of G.S. 105-164.13E for a qualifying farmer must give notice to a seller that the person no longer qualifies for an exemption for purchases made on or after July 1, 2014, and the seller must collect any tax due on the sale. A seller that relies on a copy of an agricultural certificate of exemption and meets the requirements of G.S. 105-164.28 is not liable for any tax due on the sale.

SECTION 3.1.(e) This Part becomes effective July 1, 2014, and applies to purchases made on or after that date.

PART IV. PREPAID MEAL PLANS

SECTION 4.1.(a) G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

~~(26b)~~(27) Prepaid calling service. – A right that meets all of the following requirements:

a. Authorizes the exclusive purchase of telecommunications service.

b. Must be paid for in advance.

c. Enables the origination of calls by means of an access number, authorization code, or another similar means, regardless of whether the access number or authorization code is manually or electronically dialed.

d. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.

(27a) Prepaid meal plan. – A plan offered by an institution of higher education that meets all of the following requirements:

a. Entitles a person to food or prepared food.

b. Must be billed or paid for in advance.

c. Provides for predetermined units or unlimited access to food or prepared food but does not include a dollar value that declines with use.

~~(27)~~(27b) Prepaid telephone calling service. – Prepaid calling service or prepaid wireless calling service.

~~(27a)~~(27c) Prepaid wireless calling service. – A right that meets all of the following requirements:

a. Authorizes the purchase of mobile telecommunications service, either exclusively or in conjunction with other services.

b. Must be paid for in advance.

c. Is sold in predetermined units or dollars whose number or dollar value declines with use and is known on a continuous basis.

...."

SECTION 4.1.(b) G.S. 105-164.4(a) is amended by adding a new subdivision to read:

"**§ 105-164.4. Tax imposed on retailers.**

(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and three-quarters percent (4.75%).

...

(12) The general rate of tax applies to the sales price of or gross receipts derived from a prepaid meal plan. A bundle that includes a prepaid meal plan is taxable in accordance with G.S. 105-164.4D."

SECTION 4.1.(c) G.S. 105-164.4B is amended by adding a new subsection to read:

"**§ 105-164.4B. Sourcing principles.**

...

(g) Prepaid Meal Plan. – The gross receipts derived from a prepaid meal plan are sourced to the location where the food or prepared food is available to be consumed by the person."

SECTION 4.1.(d) G.S. 105-164.4D(a) reads as rewritten:

"(a) Tax Application. – Tax applies to the sales price of a bundled transaction unless one of the following applies:

(1) Fifty percent (50%) test. – All of the products in the bundle are tangible personal property, the bundle includes one or more of the exempt products listed in this subdivision, and the price of the taxable products in the bundle does not exceed fifty percent (50%) of the price of the bundle:

a. Food exempt under G.S. 105-164.13B.

b. A drug exempt under G.S. 105-164.13(13).

c. Medical devices, equipment, or supplies exempt under G.S. 105-164.13(12).

(2) Allocation. – The bundle includes a service, and the retailer determines an allocated price for each product in the bundle based on a reasonable allocation of revenue that is supported by the retailer's business records kept in the ordinary course of business. In this circumstance, tax applies to the allocated price of each taxable product in the bundle.

(3) Ten percent (10%) test. – The price of the taxable products in the bundle does not exceed ten percent (10%) of the price of the bundle, and no other subdivision in this subsection applies.

(4) Prepaid meal plan. – The bundle includes a prepaid meal plan and a dollar value that declines with use. In this circumstance, tax applies to the allocated price of the prepaid meal plan. The tax applies to items purchased with the dollar value that declines with use as the dollar value is presented for payment.

(5) Tuition, room, and meals. – The bundle includes tuition, room, and meals offered by an institution of higher education. In this circumstance, tax applies to the allocated price of the meals. The institution determines the allocated price for meals based on a

reasonable allocation of revenue that is supported by the institution's business records kept in the ordinary course of business."

SECTION 4.1.(e) G.S. 105-164.13 reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(26) Food and prepared food sold ~~not for profit by a nonpublic or public school, including a charter school and a regional school,~~ within the school building during the regular school day. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.

...

(63) Food and prepared food to be provided to a person entitled to the food and prepared food under a prepaid meal plan subject to tax under G.S. 105-164.4(a)(12)."

SECTION 4.1.(f) Part 4 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.16A. Reporting option for prepaid meal plans.**

This section provides a taxpayer that offers to sell a prepaid meal plan with an option concerning the method by which the sales tax will be remitted to the Secretary and a return filed under G.S. 105-164.16. When the retailer enters into an agreement with a food service contractor by which the food service contractor agrees to provide food or prepared food under a prepaid meal plan, and the food service contractor with whom the retailer contracts is also a retailer under this Article, the retailer may include in the agreement that the food service contractor is liable for collecting and remitting the sales tax due on the gross receipts derived from the prepaid meal plan on behalf of the retailer. The agreement must provide that the tax applies to the allocated sales price of the prepaid meal plan paid by or on behalf of the person entitled to the food or prepaid food under the plan and not the amount charged by the food service contractor to the retailer under the agreement for the food and prepared food for the person.

A retailer who elects this option must report to the food service contractor with whom it has an agreement the gross receipts a person pays to the retailer for a prepaid meal plan. The retailer must send the food service contractor the tax due on the gross receipts derived from a prepaid meal plan."

SECTION 4.1.(g) This Part is effective when it becomes law and applies to gross receipts derived from a prepaid meal plan sold or billed on or after July 1, 2014.

PART V. ADMISSIONS

SECTION 5.1.(a) G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. For purposes of this section, the term "gross receipts" has the same meaning as the term "sales price." The general rate of tax is four and three-quarters percent (4.75%).

...

(10) The general rate of tax applies to the gross receipts derived from an admission ~~charges~~ charge to an entertainment ~~activity~~ activity. Gross receipts derived from an admission charge to an entertainment activity are taxable in accordance with 105-164.4G.~~listed in this subdivision. Offering any of these listed activities is a service. An admission charge includes a charge for a single ticket, a multioccasion ticket, a seasonal pass, an annual pass, and a cover charge.~~

~~An admission charge does not include a charge for amenities. If charges for amenities are not separately stated on the face of an admission ticket, then the charge for admission is considered to be equal to the admission charge for a ticket to the same event that does not include amenities and is for a seat located directly in front of or closest to a seat that includes amenities.~~

~~When an admission ticket is resold and the price of the admission ticket is printed on the face of the ticket, the tax does not apply to the face price. When an admission ticket is resold and the price of the admission ticket is not printed on the face of the ticket, the tax applies to the difference between the amount the reseller paid for the ticket and the amount the reseller charges for the ticket.~~

~~Admission charges to the following entertainment activities are subject to tax:~~

~~a. A live performance or other live event of any kind.~~

~~b. A motion picture or film.~~

~~c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction or a guided tour at any of these attractions.~~"

SECTION 5.1.(b) G.S. 105-164.4B is amended by adding a new subsection to read:

"**§ 105-164.4B. Sourcing principles.**

...

(g) Admissions. – The gross receipts derived from an admission charge, as defined in G.S. 105-164.4G, are sourced in accordance with G.S. 105-164.4G."

SECTION 5.1.(c) Article 5 of Chapter 105 of the General Statutes is amended by adding the following new section to read:

"**§ 105-164.4G. Entertainment activity.**

(a) Definition. – The following definitions apply in this section:

(1) Admission charge. – Gross receipts derived for the right to attend an entertainment activity. The term includes a charge for a single ticket, a multi-occasion ticket, a seasonal pass, and an annual pass; a membership fee that provides for admission; a cover charge; a surcharge; a convenience fee, a processing fee, a facility charge, a facilitation fee, or similar charge; or any other charges included in gross receipts derived from admission.

(2) Amenity. – A feature that increases the value or attractiveness of an entertainment activity that allows a person access to items that are not subject to tax under this Article and that are not available with the purchase of admission to the same event without the feature. The term

includes parking privileges, special entrances, access to areas other than general admission, mascot visits, and merchandise discounts. The term does not include any charge for food, prepared food, and alcoholic beverages subject to tax under this Article.

(3) Entertainment activity. – An activity listed in this subdivision:

a. A live performance or other live event of any kind, the purpose of which is for entertainment.

b. A movie, motion picture, or film.

c. A museum, a cultural site, a garden, an exhibit, a show, or a similar attraction.

d. A guided tour at any of the activities listed in sub-subdivision c. of this subdivision.

(4) Facilitator. – A person who accepts payment of an admission charge to an entertainment activity and who is not the operator of the venue where the entertainment activity occurs.

(b) Tax. – The gross receipts derived from an admission charge to an entertainment activity are taxed at the general rate set in G.S. 105-164.4. The tax is due and payable by the retailer in accordance with G.S. 105-164.16. For purposes of the tax imposed by this section, the retailer is the applicable person listed below:

(1) The operator of the venue where the entertainment activity occurs, unless the retailer and the facilitator have a contract between them allowing for dual remittance, as provided in subsection (d) of this section.

(2) The person that provides the entertainment and that receives admission charges directly from a purchaser.

(c) Facilitator. – A facilitator must report to the retailer with whom it has a contract the admission charge a consumer pays to the facilitator for an entertainment activity. The facilitator must send the retailer the portion of the gross receipts the facilitator owes the retailer and the tax due on the gross receipts derived from an admission charge no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the gross receipts derived from an admission charge is liable for the amount of tax the facilitator fails to send to the retailer. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subsection on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

(d) Dual Remittance. – The tax due on the gross receipts derived from an admission charge may be partially reported and remitted to the operator of the venue for remittance to the Department and partially reported and remitted by the facilitator directly to the Department. The portion of the tax not reported and remitted to the operator of the venue must be reported and remitted directly by the facilitator to the Department. A facilitator that elects to remit tax under the dual remittance option is

required to obtain a certificate of registration in accordance with G.S. 105-164.29. A facilitator is subject to the provisions of Article 9 of this Chapter.

(e) Exceptions. – The tax imposed by this section does not apply to the following:

(1) An amount paid for the right to participate in sporting activities. Examples of these types of charges include bowling fees, golf green fees, and gym memberships.

(2) Tuition, registration fees, or charges to attend instructional seminars, conferences, or workshops for educational purposes.

(3) A political contribution.

(4) A charge for lifetime seat rights, lease, or rental of a suite or box for an entertainment activity, provided the charge is separately stated on an invoice or similar billing document given to the purchaser at the time of sale.

(5) An amount paid solely for transportation.

(f) Exemptions. – The following gross receipts derived from an admission charge to an entertainment activity are specifically exempt from the tax imposed by this Article:

(1) The portion of a membership charge that is deductible as a charitable contribution under section 170 of the Code.

(2) A donation that is deductible as a charitable contribution under section 170 of the Code.

(3) Charges for an amenity. If charges for amenities are separately stated on a billing document given to the purchaser at the time of the sale, then the tax does not apply to the separately stated charges for amenities. If charges for amenities are not separately stated on the billing document given to the purchaser at the time of the sale, then the transaction is a bundled transaction and taxed in accordance with G.S. 105-164.4D except that G.S. 105-164.4D(a)(3) does not apply.

(4) An event that is sponsored by an elementary or secondary school. For purposes of this exemption, the term "school" is an entity regulated under Chapter 115C of the General Statutes.

(5) An event sponsored solely by a nonprofit entity that is exempt from tax under Article 4 of this Chapter if all of the following conditions are met:

a. The entire proceeds of the activity are used exclusively for the entity's nonprofit purposes.

b. The entity does not declare dividends, receive profits, or pay salary or other compensation to any members or individuals.

c. The entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event. For purposes of this subdivision, the term "compensate" means any remuneration included in a person's gross income as defined in section 61 of the Code.

(g) Sourcing. – Admission to an entertainment activity is sourced to the location where admission to the entertainment activity may be gained by a person. When the

location where admission may be gained is not known at the time of the receipt of the gross receipts for an admission charge, the sourcing principles in G.S. 105-164.4B(a) apply."

SECTION 5.1.(d) G.S. 105-164.13(60) reads as rewritten:

"(60) ~~Admission charges to any of the following entertainment activities:~~Gross receipts derived from an admission charge to an entertainment activity are exempt as provided in G.S. 105-164.4G.

~~a. An event that is held at an elementary or secondary school and is sponsored by the school.~~

~~b. A commercial agricultural fair that meets the requirements of G.S. 106-520.1, as determined by the Commissioner of Agriculture.~~

~~c. A festival or other recreational or entertainment activity that lasts no more than seven consecutive days and is sponsored by a nonprofit entity that is exempt from tax under Article 4 of this Chapter and uses the entire proceeds of the activity exclusively for the entity's nonprofit purposes. This exemption applies to the first two activities sponsored by the entity during a calendar year.~~

~~d. A youth athletic contest sponsored by a nonprofit entity that is exempt from tax under Article 4 of this Chapter. For the purpose of this subdivision, a youth athletic contest is a contest in which each participating athlete is less than 20 years of age at the time of enrollment.~~

~~e. A State attraction. A State attraction is a physical place supported with State funds that offers cultural, educational, historical, or recreational opportunities. The term "State funds" has the same meaning as defined in G.S. 143C-1-1.~~"

SECTION 5.1.(e) G.S. 105-164.13(34) and G.S. 105-164.13(35) read as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(34) Sales of items by a nonprofit civic, charitable, educational, scientific or literary organization when the net proceeds of the sales will be given or contributed to the State of North Carolina or to one or more of its agencies or instrumentalities, or to one or more nonprofit charitable organizations, one of whose purposes is to serve as a conduit through which such net proceeds will flow to the State or to one or more of its agencies or instrumentalities. This exemption does not apply to gross receipts derived from an admission charge to an entertainment activity.

(35) Sales by a nonprofit civic, charitable, educational, scientific, literary, or fraternal organization when all of the ~~following~~ conditions listed in

this subdivision are ~~met:~~met. This exemption does not apply to gross receipts derived from an admission charge to an entertainment activity.

a. The sales are conducted only upon an annual basis for the purpose of raising funds for the organization's activities.

b. The proceeds of the sale are actually used for the organization's activities.

c. The products sold are delivered to the purchaser within 60 days after the first solicitation of any sale made during the organization's annual sales period."

SECTION 5.1.(f) Section 5(f) of S.L. 2013-316 reads as rewritten:

"**SECTION 5.(f)** This section becomes effective January 1, 2014, and applies to ~~admissions purchased~~ gross receipts derived from an admission charge sold at retail on or after that date. For admissions to a live event, the tax applies to the initial sale or resale of tickets occurring on or after that date; gross receipts received on or after January 1, 2014, for admission to a live event, for which the initial sale of tickets occurred before that date, other than gross receipts received by a ticket reseller, are taxable under G.S. 105-37.1. Gross receipts derived from an admission charge sold at retail to a live event occurring on or after January 1, 2015, are taxable under G.S. 105-164.4G, regardless of when the initial sale of a ticket to the event occurred."

SECTION 5.1.(g) Subsection (d) of this section and G.S. 105-164.4G(f)(4) and G.S. 105-164.4G(f)(5), as enacted by subsection (c) of this section, become effective January 1, 2015. The remainder of this Part is effective when it becomes law.

PART VI. SERVICE CONTRACTS

SECTION 6.1.(a) G.S. 105-164.3(38b) reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(38b) Service contract. – A contract where the obligor under the contract agrees to maintain or repair tangible personal property or a motor vehicle. Examples of a service contract include ~~A~~ a warranty ~~agreement,~~ agreement other than a manufacturer's warranty or dealer's warranty provided at no charge to the purchaser, an extended warranty agreement, a maintenance agreement, a repair contract, or a similar agreement or ~~contract by which the seller agrees to maintain or repair tangible personal property.~~contract.

...."

SECTION 6.1.(b) G.S. 105-164.4(a)(11) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and three-quarters percent (4.75%).

...

(11) The general rate of tax applies to the sales price of or the gross receipts derived from a service contract. A service contract is taxed in accordance with G.S. 105-164.4I."

SECTION 6.1.(c) Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.4I. Service contracts.**

(a) Tax. – The sales price of or the gross receipts derived from a service contract or the renewal of a service contract sold at retail is subject to the general rate of tax set in G.S. 105-164.4 and is sourced in accordance with the sourcing principles in G.S. 105-164.4B. The retailer of a service contract is required to collect the tax due at the time of the retail sale of the contract and is liable for payment of the tax. The tax is due and payable in accordance with G.S. 105-164.16.

The retailer of a service contract is the applicable person listed below:

(1) When a service contract is sold at retail to a purchaser by the obligor under the contract, the obligor is the retailer.

(2) When a service contract is sold at retail to a purchaser by a facilitator on behalf of the obligor under the contract, the facilitator is the retailer unless the provisions of subdivision (3) of this subsection apply.

(3) When a service contract is sold at retail to a purchaser by a facilitator on behalf of the obligor under the contract and there is an agreement between the facilitator and the obligor that states the obligor will be liable for the payment of the tax, the obligor is the retailer. The facilitator must send the retailer the tax due on the sales price of or gross receipts derived from the service contract no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the sales price or gross receipts is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a retailer and a facilitator are considered terms of the agreement between the retailer and the facilitator.

(b) Exemptions. – The tax imposed by this section does not apply to the sales price of or the gross receipts derived from a service contract applicable to any of the following items:

(1) An item exempt from tax under this Article, other than a motor vehicle exempt from tax under G.S. 105-164.13(32).

(2) A transmission, distribution, or other network asset contained on utility-owned land, right-of-way, or easement.

(3) An item purchased by a professional motorsports racing team for which the team may receive a sales tax refund under G.S. 105-164.14A(5).

(4) An item subject to tax under Article 5F of Chapter 105 of the General Statutes.

(c) Exceptions. – The tax does not apply to the sales price of or the gross receipts derived from a service contract for tangible personal property sold at retail that is or will

become a part of real property unless the service contract is sold by the obligor or by a third party or facilitator on behalf of the obligor at the same time as the item of tangible personal property covered in the service contract. The tax imposed by this section does not apply to a security or similar monitoring contract for real property or to a renewal of a service contract where the tangible personal property becomes a part of or affixed to real property prior to the effective date of the renewal.

(d) Basis of Reporting. – A retailer who sells or derives gross receipts from a service contract must report those sales on an accrual basis of accounting, notwithstanding that the retailer reports tax on the cash basis for other sales at retail. The tax on the sales price of or the gross receipts derived from a service contract is due at the time of the retail sale, notwithstanding any portion that may be financed. If the sales price of or the gross receipts derived from the service contract is financed in whole or in part, the financed amount of the sales price of or the gross receipts derived from the service contract included in each payment is exempt from sales tax if the amount is separately stated in the contract and on the billing statement or other documentation provided to the purchaser at the time of the sale.

(e) Definition. – For purposes of this section, the term "facilitator" means a person who contracts with the obligor of the service contract to market the service contract and accepts payment from the purchaser for the service contract."

SECTION 6.1.(d) Part 2 of Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.11A. Refund of tax paid on rescinded sale or cancellation of service.**

(a) Refund. – A retailer is allowed a refund of sales tax remitted on a rescinded sale or cancelled service. A sale is rescinded when the purchaser returns an item to the retailer and receives a refund, in whole or in part, of the sales price paid, including a refund of the sales tax based on the taxable amount of the refund. A service is cancelled when the service is terminated and the purchaser receives a refund, in whole or in part, of the sales price paid, including a refund of the sales tax based on the taxable amount of the refund. A retailer entitled to a refund under this section may reduce taxable receipts by the taxable amount of the refund for the period in which the refund occurs or may request a refund of an overpayment as provided in G.S. 105-241.7 provided the tax has been refunded to the purchaser. The records of the retailer must clearly reflect and support the claim for refund for an overpayment of tax or adjustment to taxable receipts for the period in which the refund occurs.

(b) Service Contract. – When a service contract is cancelled and a purchaser receives a refund, in whole or in part, of the sales price paid for the service contract, the purchaser may receive a refund of the sales tax based on the taxable amount of the refund as provided in this subsection.

(1) Refund from retailer. – If the purchaser receives a refund on any portion of the sales price for a service contract purchased from the retailer required to remit the tax on the retail sale of the service contract, then the provisions of subsection (a) of this section apply.

(2) Refund application. – If the purchaser receives a refund on any portion of the sales price for a service contract from a person other than the retailer required to remit the tax on the retail sale of the service contract, then the amount refunded to the purchaser by the person does

not have to include the sales tax on the taxable amount of the refund. If the amount refunded to the purchaser by the person does not include the sales tax paid, then the purchaser may apply to the Department for a refund of the pro rata amount of the tax paid based on the taxable amount of the service contract refunded to the purchaser. The application for a refund by a purchaser must be made on a form prescribed by the Secretary, supported by documentation on the taxable amount of the service contract refunded to the purchaser from the person who refunded that amount, and filed within 30 days after the purchaser receives a refund. An application for a refund filed by the purchaser after the due date is barred. Taxes for which a refund is allowed directly to the purchaser are not an overpayment of tax and do not accrue interest as provided in G.S. 105-241.21."

SECTION 6.1.(e) G.S. 105-164.13(61) reads as rewritten:

"(61) A service contract for tangible personal property ~~that is provided for any of the following:~~may be exempt as provided in G.S. 105-164.4I.

~~a. An item exempt from tax under this Article, other than an item exempt from tax under G.S. 105-164.13(32).~~

~~b. A transmission, distribution, or other network asset contained on utility-owned land, right-of-way, or easement.~~

~~c. An item purchased by a professional motorsports racing team for which the team may receive a sales tax refund under G.S. 105-164.14A(5).~~"

SECTION 6.1.(f) G.S. 105-164.13(62) reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(62) An item used to maintain or repair tangible personal property or a motor vehicle pursuant to a service contract if the purchaser of the contract is not charged for the item. This exemption does not apply to an item used to maintain or repair tangible personal property pursuant to a service contract exempt from tax under G.S. 105-164.4I(b). For purposes of this exemption, the term "item" does not include a tool, equipment, supply, or similar tangible personal property used to complete the maintenance or repair and that is not deemed to be a component or repair part of the tangible personal property or motor vehicle for which a service contract is sold to a purchaser."

SECTION 6.1.(g) G.S. 105-187.3 reads as rewritten:

"(a) ~~Amount.~~Tax Base. – The ~~rate of the use~~ tax imposed by this Article is applied to the sum of the ~~three percent (3%) of the sum of the following:~~

~~(1)~~ ~~The~~ retail value of a motor vehicle for which a certificate of title is ~~issued.~~issued and any fee regulated by G.S. 20-101.1. The tax does not apply to the sales price of a service contract. The sales price of a

service contract is subject to the sales tax imposed under Article 5 of this Chapter.

~~(2) Any fee regulated by G.S. 20-101.1.~~

(a1) Tax Rate. – The tax rate is three percent (3%). ~~The tax is payable as provided in G.S. 105-187.4.~~ The maximum tax is one thousand dollars ($1,000) for each certificate of title issued for a Class A or Class B motor vehicle that is a commercial motor vehicle, as defined in G.S. 20-4.01. The maximum tax is one thousand five hundred dollars ($1,500) for each certificate of title issued for a recreational vehicle that is not subject to the one thousand dollar ($1,000) maximum tax. The tax is payable as provided in G.S. 105-187.4."

SECTION 6.1.(h) G.S. 105-467(b) reads as rewritten:

"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13 apply to the local sales and use tax authorized to be levied and imposed under this Article. The State refund provisions contained in G.S. 105-164.14 through G.S. 105-164.14B apply to the local sales and use tax authorized to be levied and imposed under this Article. A refund of an excessive or erroneous State sales tax collection allowed under G.S. 105-164.11 and a refund of State sales tax paid on a rescinded sale or cancelled service contract under G.S. 105-164.11A apply to the local sales and use tax authorized to be levied and imposed under this Article. The aggregate annual local refund amount allowed an entity under G.S. 105-164.14(b) for a fiscal year may not exceed thirteen million three hundred thousand dollars ($13,300,000).

...."

SECTION 6.1.(i) This Part becomes effective October 1, 2014.

PART VII. RETAILER-CONTRACTORS

SECTION 7.1.(a) G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(5) Consumer. – A person who stores, uses, or otherwise consumes in this State tangible personal property, digital property, or a service purchased or received from a retailer or supplier either within or without this State.

...

(33a) Real property contractor. – A person that contracts to perform construction, reconstruction, installation, repair, or any other service with respect to real property and to furnish tangible personal property to be installed or applied to real property in connection with the contract and the labor to install or apply the tangible personal property that becomes part of real property. The term includes a general contractor, a subcontractor, or a builder for purposes of G.S. 105-164.4H.

...

(35) Retailer. – A person engaged in the business of any of the following:

a. Making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital

property, or services for storage, use, or consumption in this State. When the Secretary finds it necessary for the efficient administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as "retailers" for the purpose of this Article.

b. Delivering, erecting, installing, or applying tangible personal property for use in this ~~State, regardless of whether the property is permanently affixed to real property or other tangible personal property.~~State that does not become part of real property pursuant to the tax imposed under G.S. 105-164.4(a)(12).

c. Making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.

(35a) Retailer-contractor. – A person that acts as a retailer when it sells tangible personal property at retail and as a real property contractor when it performs real property contracts.

...."

SECTION 7.1.(b) G.S. 105-164.4(a) is amended by adding a new subdivision to read:

"(13) The general rate of tax applies to the sales price of tangible personal property sold to a real property contractor for use by the real property contractor in erecting structures, building on, or otherwise improving, altering, or repairing real property. These sales are taxed in accordance with G.S. 105-164.4H."

SECTION 7.1.(c) Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.4H. Real property contractors.**

(a) Applicability. – A real property contractor is the consumer of the tangible personal property that the real property contractor installs or applies for others and that becomes part of real property. A retailer engaged in business in the State shall collect tax on the sales price of the tangible personal property sold at retail to a real property contractor unless a statutory exemption in G.S. 105-164.13 or G.S. 105-164.13E applies. Where a real property contractor purchases tangible personal property for storage, use, or consumption in this State and the tax due is not paid at the time of purchase, the provisions of G.S. 105-164.6 apply except as provided in subsection (b) of this section.

(b) Retailer-Contractor. – This section applies to a retailer-contractor when the retailer-contractor acts as a real property contractor. A retailer-contractor that purchases

tangible personal property to be installed or affixed to real property may purchase items exempt from tax under a certificate of exemption pursuant to G.S. 105-164.28 provided the retailer-contractor also purchases inventory items from the seller for resale. When the tangible personal property is withdrawn from inventory and installed or affixed to real property, use tax must be accrued and paid on the retailer-contractor's purchase price of the tangible personal property. Tangible personal property that the retailer-contractor withdraws from inventory for use that does not become part of real property is also subject to the tax imposed by this Article.

If a retailer-contractor subcontracts any part of the real property contract, tax is payable by the subcontractor on the subcontractor's purchase of the tangible personal property that is installed or affixed to real property in fulfilling the contract. The retailer-contractor, the subcontractor, and the owner of the real property are jointly and severally liable for the tax. The liability of a retailer-contractor, a subcontractor, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.

(c) Erroneous Collection if Separately Stated. – An invoice or other documentation issued to a consumer at the time of the sale by a real property contractor shall not separately state any amount for tax. Any amount for tax separately stated on an invoice or other documentation given to a consumer by a real property contractor is an erroneous collection and must be remitted to the Secretary, and the provisions of G.S. 105-164.11(a)(2) do not apply."

SECTION 7.2.(a) This act shall not be construed to affect the interpretation of any statute that is the subject of a State tax audit pending as of the effective date of this act or litigation that is a direct result of such audit.

SECTION 7.2.(b) A seller who collected and remitted sales or use tax in accordance with an interpretation of the law by the Secretary in the form of a rule, bulletin, or directive published before the effective date of this act is not liable to a purchaser for any overcollected sales or use tax that was collected in accordance with the rule, bulletin, or directive.

SECTION 7.3. This Part becomes effective January 1, 2015, and applies to sales on or after that date and contracts entered into on or after that date.

PART VIII. OTHER SALES TAX CHANGES

SECTION 8.1.(a) G.S. 105-164.4(a) reads as rewritten:

"(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and three-quarters percent (4.75%).

...

(3) ~~A tax at the~~ The general rate applies to the gross receipts derived from the rental of an accommodation. These rentals are taxed in accordance with G.S. 105-164.4F. ~~The tax does not apply to (i) a private residence or cottage that is rented for fewer than 15 days in a calendar year; (ii) an accommodation rented to the same person for a period of 90 or more continuous days; or (iii) an accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is~~

~~charged to the person for enrollment in the school, camp, or similar entity.~~

~~Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental.~~

~~A person who provides an accommodation that is offered for rent is considered a retailer under this Article. A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed and the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales price no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this subdivision on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.~~

~~A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this subdivision. The liability of a rental agent for the tax imposed by this subdivision relieves the provider of the accommodation from liability. A rental agent includes a real estate broker, as defined in G.S. 93A-2.~~

~~The following definitions apply in this subdivision:~~

~~a. Accommodation. A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.~~

~~b. Facilitator. A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation.~~

...."

SECTION 8.1.(b) Article 5 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-164.4F. Accommodation rentals.**

(a) Definition. – The following definitions apply in this section:

(1) Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.

(2) Facilitator. – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation.

(3) Rental agent. – The term includes a real estate broker, as defined in G.S. 93A-2.

(b) Tax. – The gross receipts derived from the rental of an accommodation are taxed at the general rate set in G.S. 105-164.4. Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental.

(c) Facilitator Transactions. – A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed, and the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales price no later than 10 days after the end of each calendar month. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is not liable for tax due but not received from a facilitator. The requirements imposed by this section on a retailer and a facilitator are considered terms of the contract between the retailer and the facilitator.

(d) Rental Agent. – A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax imposed by this section. The liability of a rental agent for the tax imposed by this section relieves the provider of the accommodation from liability.

(e) Exemptions. – The tax imposed by this section does not apply to the following:

(1) A private residence, cottage, or similar accommodation that is rented for fewer than 15 days in a calendar year other than a private residence, cottage, or similar accommodation listed with a real estate broker or agent.

(2) An accommodation supplied to the same person for a period of 90 or more continuous days.

(3) An accommodation arranged or provided to a person by a school, camp, or similar entity where a tuition or fee is charged to the person for enrollment in the school, camp, or similar entity."

SECTION 8.1.(c) A retailer is not liable for an overcollection or undercollection of sales tax or occupancy tax if the retailer has made a good-faith effort

to comply with the law and collect the proper amount of tax and has, due to the change under this section, overcollected or undercollected the amount of sales tax or occupancy tax that is due. This subsection applies only to the period beginning June 14, 2012, and ending July 1, 2014.

SECTION 8.1.(d) This section becomes effective June 1, 2014, and applies to gross receipts derived from the rental of an accommodation that a person occupies or has the right to occupy on or after that date.

SECTION 8.2.(a) G.S. 105-164.14(b) and G.S. 105-164.14(c) read as rewritten:

"(b) Nonprofit Entities and Hospital Drugs. – A nonprofit entity is allowed a semiannual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and ~~services, other than electricity, telecommunications service, and ancillary service,~~ services for use in carrying on the work of the nonprofit entity. Sales and use tax liability indirectly incurred by a nonprofit entity through reimbursement to an authorized person of the entity for the purchase of tangible personal property and ~~services, other than electricity, telecommunications service, and ancillary service,~~ services for use in carrying on the work of the nonprofit entity is considered a direct purchase by the entity. Sales and use tax liability indirectly incurred by a nonprofit entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the nonprofit entity and is being erected, altered, or repaired for use by the nonprofit entity for carrying on its nonprofit activities is considered a sales or use tax liability incurred on direct purchases by the nonprofit entity. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund for the first six months of a calendar year is due the following October 15; a request for a refund for the second six months of a calendar year is due the following April 15. The aggregate annual refund amount allowed an entity under this subsection for a fiscal year may not exceed thirty-one million seven hundred thousand dollars ($31,700,000).

The refunds allowed under this subsection do not apply to an entity that is owned and controlled by the United States or to an entity that is owned or controlled by the State and is not listed in this subsection. A hospital that is not listed in this subsection is allowed a semiannual refund of sales and use taxes paid by it on over-the-counter drugs purchased for use in carrying out its work. The following nonprofit entities are allowed a refund under this subsection:

...

(c) Certain Governmental Entities. – A governmental entity listed in this subsection is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and ~~services, other than electricity, telecommunications service, and ancillary service.~~ services. Sales and use tax liability indirectly incurred by a governmental entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the governmental entity and is being erected, altered, or repaired for use by the governmental entity is considered a sales or use tax liability

incurred on direct purchases by the governmental entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund must be in writing and must include any information and documentation required by the Secretary. A request for a refund is due within six months after the end of the governmental entity's fiscal year.

This subsection applies only to the following governmental entities:

...."

SECTION 8.2.(b) G.S. 105-467(b) reads as rewritten:

"(b) Exemptions and Refunds. – The State exemptions and exclusions contained in G.S. 105-164.13 apply to the local sales and use tax authorized to be levied and imposed under this Article. The State refund provisions contained in G.S. 105-164.14 through G.S. 105-164.14B apply to the local sales and use tax authorized to be levied and imposed under this Article. The aggregate annual local refund amount allowed an entity under G.S. 105-164.14(b) for a fiscal year may not exceed thirteen million three hundred thousand dollars ($13,300,000).

Except as provided in this subsection, a taxing county may not allow an exemption, exclusion, or refund that is not allowed under the State sales and use tax. A local school administrative unit and a joint agency created by interlocal agreement among local school administrative units pursuant to G.S. 160A-462 to jointly purchase food service-related materials, supplies, and equipment on their behalf is allowed an annual refund of sales and use taxes paid by it under this Article on direct purchases of tangible personal property and ~~services, other than electricity, telecommunications service, and ancillary service.~~ services. Sales and use tax liability indirectly incurred by the entity on building materials, supplies, fixtures, and equipment that become a part of or annexed to any building or structure that is owned or leased by the entity and is being erected, altered, or repaired for use by the entity is considered a sales or use tax liability incurred on direct purchases by the entity for the purpose of this subsection. The refund allowed under this subsection does not apply to purchases of electricity, telecommunications service, ancillary service, piped natural gas, video programming, or a prepaid meal plan. A request for a refund is due in the same time and manner as provided in ~~G.S. 105-164.14.~~ G.S. 105-164.14(c). Refunds applied for more than three years after the due date are barred."

SECTION 8.2.(c) This section becomes effective July 1, 2014, and applies to purchases occurring on or after that date.

SECTION 8.3.(a) G.S. 105-164.13(30) is repealed.

SECTION 8.3.(b) G.S. 105-164.13(50) reads as rewritten:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(50) Fifty percent (50%) of the sales price of tangible personal property sold through a coin-operated vending machine, other than ~~tobacco.~~tobacco and newspapers.

...."

SECTION 8.3.(c) This section becomes effective October 1, 2014, and applies to sales made on or after that date.

SECTION 8.4.(a) G.S. 105-164.13 is amended by adding a new subdivision to read:

"**§ 105-164.13. Retail sales and use tax.**

The sale at retail and the use, storage, or consumption in this State of the following tangible personal property, digital property, and services are specifically exempted from the tax imposed by this Article:

...

(63) Fifty percent (50%) of the sales prices of a modular home or a manufactured home, including all accessories attached when delivered to the purchaser."

SECTION 8.4.(b) This section becomes effective July 1, 2014, and applies to sales made on or after that date.

PART IX. EXCISE TAX CHANGES

SECTION 9.1.(a) G.S. 105-113.13(b) reads as rewritten:

"(b) The Secretary may require a distributor to furnish a bond in an amount that adequately protects the State from loss if the distributor fails to pay taxes due under this Part. A bond ~~shall be~~ must be conditioned on compliance with this Part, ~~shall be~~ payable to the State, and ~~shall be~~ in the form required by the Secretary. The Secretary ~~shall~~ must set the bond amount based on the anticipated tax liability of the distributor. The Secretary ~~shall~~ should periodically review the sufficiency of bonds required of the distributor and ~~shall~~ increase the required bond amount ~~of a required bond if the bond~~ if the amount no longer covers the anticipated tax liability of the ~~distributor. The Secretary shall~~ distributor and decrease the amount ~~of a required bond~~ if the Secretary finds that a lower bond amount will protect the State adequately from loss. ~~For~~

For purposes of this section, ~~a bond may also include an irrevocable letter of credit.~~ a distributor may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the amounts stipulated in this section."

SECTION 9.1.(b) G.S. 105-113.38 reads as rewritten:

"**§ 105-113.38. Bond or irrevocable letter of credit.**

The Secretary may require a wholesale dealer or a retail dealer to furnish a bond in an amount that adequately protects the State from loss if the dealer fails to pay taxes due under this Part. A bond ~~shall~~ must be conditioned on compliance with this Part, ~~shall be~~ payable to the State, and ~~shall be~~ in the form required by the Secretary. The ~~Secretary shall proportion a~~ bond amount must be proportionate to the anticipated tax liability of the wholesale dealer or retail dealer. The Secretary ~~shall~~ should periodically review the sufficiency of bonds required of dealers, and ~~shall~~ increase the amount of a required bond when the amount of the bond furnished no longer covers the anticipated tax liability of the wholesale dealer or retail ~~dealer. The Secretary shall~~ dealer and decrease

the amount ~~of a required bond~~ when the Secretary determines that a smaller bond amount will adequately protect the State from loss. ~~For~~

For purposes of this section, ~~a bond may also include an irrevocable letter of credit.~~a wholesale dealer or a retail dealer may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the amounts stipulated in this section."

SECTION 9.1.(c) G.S. 105-113.86 reads as rewritten:

"**§ 105-113.86. ~~Bonds.~~Bond or irrevocable letter of credit.**

(a) Wholesalers and Importers. – A wholesaler or importer ~~shall furnish~~ must file with the Secretary a bond in an amount of not less than five thousand dollars ~~($5,000) nor more than fifty thousand dollars ($50,000).~~($5,000). The amount of the bond must be proportionate to the anticipated tax liability of the wholesaler or importer. The Secretary should periodically review the sufficiency of the bonds required under this section. The Secretary may increase the proportionate amount required, not to exceed fifty thousand dollars ($50,000), if the bond furnished no longer covers the taxpayer's anticipated tax liability. The Secretary may decrease the proportionate amount required when the Secretary determines that a smaller bond amount will adequately protect the State from loss. The bond ~~shall~~ must be conditioned on compliance with this Article, ~~shall be~~ payable to the State, ~~shall be~~ in a form acceptable to the Secretary, and ~~shall be~~ secured by a corporate ~~surety or by a pledge of obligations of the federal government, the State, or a political subdivision of the State.~~surety. ~~The Secretary shall proportion the bond amount to the anticipated tax liability of the wholesaler or importer. The Secretary shall periodically review the sufficiency of bonds furnished by wholesalers and importers, and shall increase the amount of a bond required of a wholesaler or importer when the amount of the bond furnished no longer covers the wholesaler's or importer's anticipated tax liability.~~

...

(c) Letter of Credit. – For purposes of this section, a wholesaler or importer or a nonresident vendor may substitute an irrevocable letter of credit for the secured bond required by this section. The letter of credit must be issued by a commercial bank acceptable to the Secretary and available to the State as a beneficiary. The letter of credit must be in a form acceptable to the Secretary, conditioned upon compliance with this Article, and in the amounts stipulated in this section."

SECTION 9.2. G.S. 105-113.39(b) reads as rewritten:

"(b) Refund. – A wholesale dealer or retail dealer who is primarily liable under G.S. 105-113.35(b) for the excise taxes imposed by this Part and is in possession of stale or otherwise unsalable tobacco products upon which the tax has been paid may return the tobacco products to the manufacturer and apply to the Secretary for refund of the tax. The application shall be in the form prescribed by the Secretary and shall be accompanied by a written certificate signed under penalty of perjury or an affidavit from the manufacturer listing the tobacco products returned to the manufacturer by the applicant. The Secretary shall refund the tax paid, less the discount allowed, on the listed products."

SECTION 9.3. G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

(40a) To furnish a data clearinghouse the information required to be released in accordance with the State's agreement under the December 2012 Term Sheet Settlement, as finalized by the State in the NPM Adjustment Settlement Agreement, concerning annual tobacco product sales by a nonparticipating manufacturer. The following definitions apply in this subdivision:

a. Data clearinghouse. – Defined in the Term Sheet Settlement and in the NPM Adjustment Settlement Agreement.

b. Master Settlement Agreement. – Defined in G.S. 66-290.

c. Nonparticipating manufacturer. – Defined in G.S. 66-292.

d. NPM Adjustment Settlement Agreement. – The final executed settlement document resulting from the 2012 Term Sheet Settlement.

e. Participating manufacturer. – Defined in G.S. 66-292.

f. Term Sheet Settlement. – The settlement agreement entered into in December 2012 by the State and certain participating manufacturers under the Master Settlement Agreement.

...

(46) To furnish to a person who provides the State with a bond or irrevocable letter of credit on behalf of a taxpayer the information necessary for the Department to collect on the bond or letter of credit in the case of noncompliance with the tax laws by the taxpayer covered by the bond or letter of credit."

SECTION 9.4. G.S. 105-260.1 reads as rewritten:

"**§ 105-260.1. Delegation of authority to hold hearings.**

The Secretary ~~of Revenue~~ may delegate ~~to a Deputy or Assistant Secretary of Revenue~~ the authority to hold ~~any~~ a hearing required or allowed under this Chapter."

SECTION 9.5.(a) The heading to Article 36B of Chapter 105 of the General Statutes reads as rewritten:

"Article 36B.

Tax on ~~Carriers Using Fuel Purchased Outside State.~~Motor Carriers."

SECTION 9.5.(b) G.S. 105-449.37 reads as rewritten:

"**§ 105-449.37. Definitions; tax ~~liability.~~liability; application.**

(a) Definitions. – The following definitions apply in this Article:

(1) International Fuel Tax Agreement. – The Articles of Agreement adopted by the International Fuel Tax Association, Inc., as amended as of ~~June 1, 2010.~~July 1, 2013.

(2) Motor carrier. – A person who operates or causes to be operated on any highway in this State a motor vehicle that is a qualified motor vehicle. The term does not include the United States, a state, or a political subdivision of a state.

(3) Motor vehicle. – Defined in G.S. 20-4.01.

(4) Operations. – The movement of a qualified motor vehicle by a motor carrier, whether loaded or empty and whether or not operated for compensation.

(5) Person. – Defined in G.S. 105-228.90.

(6) Qualified motor vehicle. – Defined in the International Fuel Tax Agreement.

(7) Secretary. – Defined in G.S. 105-228.90.

(b) Liability. – A motor carrier who operates on one or more days of a reporting period is liable for the tax imposed by this Article for that reporting period and is entitled to the credits allowed for that reporting period.

(c) Application. – A motor carrier who operates a qualified motor vehicle in this State must register the vehicle as provided in this Article and obtain the appropriate license and decals for the vehicle. The Article applies to both an interstate motor carrier subject to the International Fuel Tax Agreement and to an intrastate motor carrier."

SECTION 9.5.(c) G.S. 105-449.47(a) reads as rewritten:

"(a) Requirement. – A motor carrier ~~that is subject to the International Fuel Tax Agreement~~ may not operate or cause to be operated in this State a qualified motor vehicle unless both the motor carrier and at least one qualified motor vehicle are registered as provided in this subsection. This subsection applies to a motor carrier that operates a recreational vehicle that is considered a qualified motor vehicle. A motor carrier that is subject to the International Fuel Tax Agreement must register with the motor carrier's base state jurisdiction. A motor carrier that is not subject to the International Fuel Tax Agreement ~~may not operate or cause to be operated in this State a qualified motor vehicle unless both the motor carrier and at least one qualified motor vehicle are registered~~ must register with the Secretary for purposes of the tax imposed by this Article. ~~This subsection applies to a motor carrier that operates a recreational vehicle that is considered a qualified motor vehicle.~~"

SECTION 9.6. G.S. 105-449.61(a) reads as rewritten:

"(a) No Local Tax. – A county or city may not impose a tax on the sale, distribution, or use of motor ~~fuel.~~fuel, except motor fuel for which a refund of the per gallon excise tax is allowed under G.S. 105-449.105A or G.S. 105-449.107."

SECTION 9.7.(a) G.S. 105-449.81 reads as rewritten:

"**§ 105-449.81. Excise tax on motor fuel.**

An excise tax at the motor fuel rate is imposed on motor fuel that is:

...

(3b) Fuel grade ethanol or biodiesel fuel if the fuel ~~that meets any~~ meets at least one of the following descriptions:

a. Is produced in this State and is removed from the storage facility at the production location.

b. Is imported to this State outside the terminal transfer system.

c. Repealed by Session Laws 2009-445, s. 34(a), effective January 1, 2010.

...."

SECTION 9.7.(b) G.S. 105-449.83A reads as rewritten:

"**§ 105-449.83A. Liability for tax on fuel grade ~~ethanol.~~ethanol and biodiesel.**

The excise tax imposed by G.S. 105-449.81(3b) on fuel grade ethanol is payable by the refiner or fuel alcohol provider. The excise tax imposed by G.S. 105-449.81(3b) on biodiesel is payable by the refiner or the biodiesel provider."

SECTION 9.7.(c) This section becomes effective October 1, 2014.

SECTION 9.8.(a) G.S. 105-449.52 reads as rewritten:

"**§ 105-449.52. Civil penalties applicable to motor carriers.**

(a) Penalty. – A motor carrier who does any of the ~~following~~ acts listed in this subsection is subject to a civil ~~penalty:~~penalty. The Secretary may reduce or waive the penalty as provided under G.S. 105-449.119.

(1) Operates in this State or causes to be operated in this State a qualified motor vehicle that either fails to carry the registration card required by this Article or fails to display a decal in accordance with this Article. The amount of the penalty is one hundred dollars ($100.00).

(2) Is unable to account for a decal the Secretary issues the motor carrier, as required by G.S. 105-449.47. The amount of the penalty is one hundred dollars ($100.00) for each decal for which the carrier is unable to account.

(3) Displays a decal on a qualified motor vehicle operated by a motor carrier that was not issued to the carrier by the Secretary under G.S. 105-449.47. The amount of the penalty is one thousand dollars ($1,000) for each decal unlawfully obtained. Both the licensed motor carrier to whom the Secretary issued the decal and the motor carrier displaying the unlawfully obtained decal are jointly and severally liable for the penalty under this subdivision.

(a1) Payment. – A penalty imposed under this section is payable to the agency that assessed the penalty. When a qualified motor vehicle is found to be operating without a registration card or a decal or with a decal the Secretary did not issue for the vehicle, the qualified motor vehicle may not be driven for a purpose other than to park it until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operating it will not jeopardize collection of the penalty.

~~(b) Review. – The procedure set out in G.S. 105-449.119 for reviewing a penalty imposed under Article 36C, Part 6, of this Chapter applies to a penalty imposed under this section.~~"

SECTION 9.8.(b) G.S. 105-449.119 reads as rewritten:

"**§ 105-449.119. Review of civil penalty assessment.**

A person who denies liability for a penalty imposed under this Part ~~must pay the penalty and file a request for a Departmental review of the penalty. The request must be filed within the time set in G.S. 105-241.11 for requesting a Departmental review of a~~

~~proposed assessment.~~ may request the Secretary to waive the penalty. ~~The procedures in Article 9 of this Chapter for review of a proposed assessment apply to the review of the penalty. The date the penalty was imposed is considered the date the notice of proposed assessment was delivered to the taxpayer.~~The Secretary may reduce or waive a penalty as provided in Article 9 of this Chapter."

SECTION 9.9.(a) G.S. 105-449.115(b) reads as rewritten:

"(b) Content. – A shipping document ~~issued by~~ is a permanent record that must contain the following information and any other information required by the Secretary:

(1) Identification, including address, of the terminal or bulk plant from which the motor fuel was received.

(1a) The type of motor fuel loaded.

(2) The date the motor fuel was loaded.

(3) The gross gallons loaded if the motor fuel is loaded onto a transport truck, and the gross pounds loaded if the motor fuel is loaded onto a railroad tank car.

(3a) The motor fuel transporter for the motor fuel.

(4) The destination state of the motor fuel, as represented by the purchaser of the motor fuel or the purchaser's agent.

(5) If the document is issued by a refiner or a terminal operator, the document must be machine printed. If the motor fuel is loaded onto a transport truck, the document must contain the following information:

a. The net gallons loaded.

b. A tax responsibility statement indicating the name of the supplier that is responsible for the tax due on the motor fuel."

SECTION 9.9.(b) This section becomes effective October 1, 2014.

SECTION 9.10.(a) G.S. 105-449.106(c) reads as rewritten:

"(c) Special Mobile Equipment. – A person who purchases and uses motor fuel for the off-highway operation of special mobile equipment registered under Chapter 20 of the General Statutes may receive a quarterly refund, for the excise tax paid during the preceding quarter, at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate in effect during the quarter for which the refund is claimed, less the amount of sales and use tax ~~or privilege tax~~ due on the fuel under this Chapter, as determined in accordance with G.S. 105-449.107(c). An application for a refund must be made in accordance with this Part."

SECTION 9.10.(b) G.S. 105-449.107 reads as rewritten:

"(a) Off-Highway. – A person who purchases and uses motor fuel for a purpose other than to operate a licensed highway vehicle may receive an annual refund for the excise tax the person paid on fuel used during the preceding calendar year. The amount of refund allowed is the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax ~~or privilege tax~~ due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part.

(b) Certain Vehicles. – A person who purchases and uses motor fuel in one of the vehicles listed below may receive an annual refund for the amount of fuel consumed by the vehicle:

...

The amount of refund allowed is thirty-three and one-third percent (33 1/3%) of the following: the sum of the flat cents-per-gallon rate in effect during the year for which the refund is claimed and the average of the two variable cents-per-gallon rates in effect during that year, less the amount of sales and use tax ~~or privilege tax~~ due on the fuel under this Chapter. An application for a refund allowed under this section must be made in accordance with this Part. This refund is allowed for the amount of fuel consumed by the vehicle in its mixing, compacting, or unloading operations, as distinguished from propelling the vehicle, which amount is considered to be one-third of the amount of fuel consumed by the vehicle.

(c) Sales Tax Amount. – Article 5 of Subchapter I of this Chapter determines the amount of State sales and use tax to be deducted under this section from a motor fuel excise tax refund. Articles 39, 40, and 42 of Subchapter VIII of this Chapter and the Mecklenburg First 1% Sales Tax Act determine the amount of local sales and use tax to be deducted under this section from a motor fuel excise tax refund. ~~Article 5F of this Chapter determines the amount of privilege tax to be deducted under this section from a motor fuel excise tax refund.~~ The sales price and the cost price of motor fuel to be used in determining the amount to deduct is the average of the wholesale prices used under G.S. 105-449.80 to determine the excise tax rates in effect for the two six-month periods of the year for which the refund is claimed."

SECTION 9.11. Except as otherwise provided, this Part is effective when it becomes law.

PART X. TAX LAW COMPLIANCE CHANGES

SECTION 10.1.(a) G.S. 18B-900 reads as rewritten:

"**§ 18B-900. Qualifications for permit.**

(a) Requirements. – To be eligible to receive and to hold an ABC permit, a person ~~shall:~~must satisfy all of the following requirements:

(1) Be at least 21 years old, unless the person is a manager of a business selling only malt beverages and unfortified wine, in which case the person shall be at least 19 years ~~old;~~old.

(2) Be a resident of North Carolina unless:

a. He is an officer, director or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business; or

b. He has executed a power of attorney designating a qualified resident of this State to serve as attorney in fact for the purposes of receiving service of process and managing the business for which permits are sought; or

c. He is applying for a nonresident malt beverage vendor permit, a nonresident wine vendor permit, or a vendor representative ~~permit;~~ permit.

(3) Not have been convicted of a felony within three years, and, if convicted of a felony before then, ~~shall have~~ has had his citizenship ~~restored;~~restored.

(4) Not have been convicted of an alcoholic beverage offense within two ~~years;~~years.

(5) Not have been convicted of a misdemeanor controlled substance offense within two ~~years; and~~years.

(6) Not have had an alcoholic beverage permit revoked within three years, except where the revocation was based solely on a permittee's failure to pay the annual registration and inspection fee required in G.S. 18B-903(b1).

(7) Not have, whether as an individual or as an officer, director, shareholder or manager of a corporate permittee, an unsatisfied outstanding final judgment that was entered against him in an action under Article 1A of this Chapter.

(8) Be current in filing all applicable tax returns to the State and in payment of all taxes, interest, and penalties that are collectible under G.S. 105-241.22. This subdivision does not apply to the following ABC permits:

a. Special occasion permit under G.S. 18B-1001(8).

b. Limited special occasion permit under G.S. 18B-1001(9).

c. Special one-time permit under G.S. 18B-1002.

d. Salesman permit under G.S. 18B-1111.

To avoid undue hardship, however, the Commission may decline to take action under G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5).

...

(f) Procedure to Confirm State Tax Compliance. – Upon request of the Commission, the Department of Revenue must provide information to the Commission to confirm a person's compliance with subdivision (a)(8) of this section. If the Department of Revenue notifies the Commission that a person is not in compliance, then the Commission may not issue or renew the person's permit until the Commission receives notice from the Department of Revenue that the person is in compliance. The requirement to pay all taxes, interest, and penalties may be satisfied by an operative agreement under G.S. 105-237 covering any amounts that are collectible under G.S. 105-241.22. Chapter 150B of the General Statutes does not apply to a Commission action on issuance, suspension, or revocation of an ABC permit under subdivision (a)(8) of this section."

SECTION 10.1.(b) G.S. 18B-906(a) reads as rewritten:

"(a) Act Applies. – An ABC permit is a "license" within the meaning of G.S. 150B-2, and, except for revocation pursuant to ~~G.S. 18B-904(e)(3),~~ G.S. 18B-904(e)(3) or for a confirmation pursuant to G.S. 18B-900(a)(8), a Commission action on issuance, suspension, or revocation of an ABC permit, other than a temporary permit issued under G.S. 18B-905, is a "contested case" subject to the provisions of Chapter 150B except as provided in this section."

SECTION 10.1.(c) G.S. 105-259(b) is amended by adding a new subdivision to read:

"(b) Disclosure Prohibited. – An officer, an employee, or an agent of the State who has access to tax information in the course of service to or employment by the State may not disclose the information to any other person except as provided in this

subsection. Standards used or to be used for the selection of returns for examination and data used or to be used for determining the standards may not be disclosed for any purpose. All other tax information may be disclosed only if the disclosure is made for one of the following purposes:

...

(46) To provide the Alcoholic Beverage Control Commission the information required under G.S. 18B-900."

SECTION 10.1.(d) G.S. 105-243.1(e) reads as rewritten:

"(e) Use. – The fee is a receipt of the Department and must be applied to the costs of collecting overdue tax debts. The proceeds of the fee must be credited to a special account within the Department and may be expended only as provided in this subsection. The proceeds of the fee may not be used for any purpose that is not directly and primarily related to collecting overdue tax debts. The Department may apply the proceeds of the fee for the purposes listed in this subsection. The remaining proceeds of the fee may be spent only pursuant to appropriation by the General Assembly. The fee proceeds do not revert but remain in the special account until spent for the costs of collecting overdue tax debts. The Department and the Office of State Budget and Management must account for all expenditures using accounting procedures that clearly distinguish costs allocable to collecting overdue tax debts from costs allocable to other purposes and must demonstrate that none of the fee proceeds are used for any purpose other than collecting overdue tax debts.

The Department may apply the fee proceeds for the following purposes:

(1) To pay contractors for collecting overdue tax debts under subsection (b) of this section.

(2) To pay the fee the United States Department of the Treasury charges for setoff to recover tax owed to North Carolina.

(3) To pay for taxpayer locater services, not to exceed ~~one hundred fifty thousand dollars ($150,000)~~ five hundred thousand dollars ($500,000) a year.

(4) To pay for postage or other delivery charges for correspondence directly and primarily relating to collecting overdue tax debts, not to exceed five hundred thousand dollars ($500,000) a year.

(5) To pay for operating expenses for Project Collection Tax and the Taxpayer Assistance Call Center.

(6) To pay for expenses of the Examination and Collection Division directly and primarily relating to collecting overdue tax debts."

SECTION 10.1.(e) Subsections (a), (b), and (c) of Section 10.1 of this act become effective May 1, 2015. The remainder of this Part is effective when it becomes law.

PART XI. PROPERTY TAX CHANGES

SECTION 11.1.(a) G.S. 105-333 reads as rewritten:

"**§ 105-333. Definitions.**

The following definitions apply in this Article unless the context requires a different meaning:

...

(9a) Mobile telecommunications company. – A company providing a mobile telecommunications service as defined in G.S. 105-164.3.

...

(14) Public service company. – A railroad company, a pipeline company, a gas company, an electric power company, an electric membership corporation, a telephone company, ~~a telegraph company,~~ a bus line company, an airline company, ~~or~~ a motor freight carrier ~~company.~~ company, a mobile telecommunications company, or a tower aggregator company. The term also includes any company performing a public service that is regulated by the United States Department of Energy, the United States Department of Transportation, the Federal Communications Commission, the Federal Aviation Agency, or the North Carolina Utilities Commission, except that the term does not include a water company, ~~providers of mobile telecommunications service as defined in G.S. 105-164.3,~~ a cable television company, or a radio or television broadcasting company.

...

(17a) Tangible personal property of a mobile telecommunications company. – All tangible personal property located in this State that is owned by a mobile telecommunications company or is leased to and capitalized on the books of a mobile telecommunications company in accordance with generally accepted accounting principles, including cellular towers, cellular equipment shelters, and site improvements at cellular tower locations. The term does not include FCC licenses or authorizations or other intangible personal property.

(17b) Tangible personal property of a tower aggregator company. – All tangible personal property located in this State that is owned by a tower aggregator company or is leased to and capitalized on the books of a tower aggregator company in accordance with generally accepted accounting principles, including cellular towers, cellular equipment shelters, and site improvements at cellular tower locations.

~~(18) Telegraph company. – A company engaged in the business of transmitting telegraph messages to, from, within, or through the State.~~

(19) Telephone company. – A company engaged in the business of transmitting telephone messages and conversations to, from, within, or through this ~~State.~~State, except that the term does not include a mobile telecommunications company.

...

(22) Tower aggregator company. – A company that provides tower infrastructure for broadcasting and mobile telephony and that leases space on the tower infrastructure to mobile telecommunications companies."

SECTION 11.1.(b) G.S. 105-335 reads as rewritten:

"**§ 105-335. Appraisal of property of public service companies.**

(a) Duty to Appraise. – ~~In accordance with the provisions of subsection (b), below, the~~ The Department of Revenue shall appraise for taxation ~~the true value of~~ each

public service company in accordance with subsection (b) of this section except for a public service company listed in this subsection. The Department shall appraise certain specified properties of the following public service companies in accordance with subsection (c) of this section, ~~(other than bus line, motor freight carrier, and airline companies) as a system (both inside and outside this State). Certain specified properties of bus line, motor freight carrier, and airline companies shall be appraised by the Department in accordance with the provisions of subsection (c), below,~~ and all other properties of such companies shall be listed, appraised, and assessed in the manner prescribed by this Subchapter for the properties of taxpayers other than public service ~~companies.~~companies:

(1) Bus line.

(2) Motor freight carrier.

(3) Airline.

(4) Mobile telecommunications company.

(5) Tower aggregator company.

(b) Property of Public Service Companies Other Than Those Noted in Subsection (c). –

(1) System Property. – Each year, as of January 1, the Department of Revenue shall appraise at its true value ~~(as defined in G.S. 105-283)~~ the system property used by each public service company both inside and outside this State. Property leased by a public service company shall be included in appraising the value of its system property if necessary to ascertain the true value of the company's system property.

(2) Nonsystem Personal Property. – Each year as of January 1, the Department shall appraise at its true value ~~(as defined in G.S. 105-283)~~ each public service company's nonsystem tangible personal property subject to taxation in this State.

(3) Nonsystem Real Property. – In accordance with the county in which the public service company's nonsystem real property is located and the schedules set out in G.S. 105-286 and 105-287, the Department of Revenue shall appraise at its true value ~~(as defined in G.S. 105-283)~~ each public service company's nonsystem real property subject to taxation in this State.

(c) Property of Bus Line, Motor Freight Carrier, ~~and Airline~~ Airline, Mobile Telecommunications, and Tower Aggregator Companies. –

(1) Bus Company Rolling Stock. – Each year as of January 1, the Department shall appraise at its true value ~~(as defined in G.S. 105-283)~~ the rolling stock owned or leased by or operated under the control of each bus line ~~company, which bus line company~~ that is domiciled in this State or ~~which~~ that is regularly engaged in business in this State.

(2) Motor Freight Carrier Company Rolling Stock. – Each year as of January 1, the Department shall appraise at its true value ~~(as defined in G.S. 105-283)~~ the rolling stock owned by a motor freight carrier company or leased by a motor freight carrier company and operated by its employees ~~which motor freight carrier company~~ that is domiciled in

this State or that is regularly engaged in business in this State at a terminal owned or leased by the carrier.

(3) Flight Equipment. – Each year, as of January 1, the Department shall appraise at its true value ~~(as defined in G.S. 105-283)~~ the flight equipment owned or leased by or operated under the control of each airline company that is domiciled in the State or that is regularly engaged in business at some airport in this State.

(4) Property of Mobile Telecommunications Company. – Each year, as of January 1, the Department shall appraise at its true value the tangible personal property of a mobile telecommunications company as provided in G.S. 105-336(c) and G.S. 105-336(d).

(5) Property of Tower Aggregator Company. – Each year, as of January 1, the Department shall appraise at its true value the tangible personal property of a tower aggregator company as provided in G.S. 105-336(d)."

SECTION 11.1.(c) G.S. 105-336 reads as rewritten:

"**§ 105-336. Methods of appraising certain properties of public service companies.**

(a) Appraising System Property of Public Service Companies Other Than Those Noted in ~~Subsection (b).~~ Subsections (b), (c), and (d) of This Section. – The Department of Revenue shall give consideration to the factors listed in this subsection in ~~In~~ determining the true value of each public service company as a system, other ~~(other~~ than one covered by subsection (b), (c), or (d) of this subsection. ~~below) as a system the Department of Revenue shall give consideration to the following:~~ The factors are:

(1) The market value of the company's capital stock and debt, taking into account the influence of any nonsystem property.

(2) The book value of the company's system property as reflected in the books of account kept under the regulations of the appropriate federal or State regulatory agency and what it would cost to replace or reproduce the system property, less a reasonable allowance for depreciation.

(3) The gross receipts and operating income of the company.

(4) Any other factor or information that in the judgment of the Department has a bearing on the true value of the company's system property.

(b) Appraising Rolling Stock and Flight Equipment. – In determining the true value of the rolling stock of bus line and motor freight carrier companies and the flight equipment of airline companies, the Department of Revenue shall consider the book value of the property as reflected in the books of account kept under the regulations of the appropriate federal or State regulatory agency and what it would cost to replace or reproduce the property in its existing condition.

(c) Appraising Tangible Personal Property of Mobile Telecommunications Companies. – In determining the true value of the tangible personal property of a mobile telecommunications company (excluding towers), the Department of Revenue shall consider the original cost of the property as reflected in the books of account maintained by the company in accordance with generally accepted accounting principles. The Department of Revenue may also consider what it would cost to replace

or reproduce the property. In either case, an appropriate deduction shall be made for all forms of depreciation, including physical deterioration, functional obsolescence, and external or economic obsolescence.

(d) Appraising Tangible Personal Property of Tower Aggregator Companies and Certain Property of Mobile Telecommunications Companies. – In determining the true value of the tangible personal property of a tower aggregator company (excluding towers), the Department of Revenue shall consider the original cost of the property as reflected in the books of account maintained by the company in accordance with generally accepted accounting principles and may also consider what it would cost to replace or reproduce the property. In determining the true value of a tower of a tower aggregator company or a mobile telecommunications company, the Department of Revenue shall consider what it would cost to replace or reproduce the tower, based on tower height and type, as determined by a nationally recognized cost service commonly utilized by appraisers. For all property, an appropriate deduction shall be made for all forms of depreciation, including physical deterioration, functional obsolescence, and external or economic obsolescence."

SECTION 11.1.(d) G.S. 105-337 reads as rewritten:

"**§ 105-337. Apportionment of taxable values to this State.**

With respect to any public service company operating both inside and outside this ~~State, it shall be the duty of~~ State, other than a mobile telecommunications company or a tower aggregator company, the Department of Revenue ~~to~~ shall apportion for taxation in this State a fair and reasonable share of the value of the company as a system or its rolling stock or flight equipment as appraised under the provisions of G.S. 105-336. Thus, when the Department has determined true value in accordance with the provisions of G.S. 105-336(a) or G.S. 105-336(b), it shall ascertain the portion of the total value subject to taxation in this State by applying property, business, and mileage factors thereto in accordance with the ratio that the company's property, business, or mileage in this State bears to its total property, business, or mileage. In its discretion, the Department may use one or more of the factors listed in the preceding sentence in order to achieve a fair and accurate result in the apportionment of the value of the property of any public service company. ~~As used in this section,~~The following definitions apply in this section:

(1) ~~The term "business factor" means data~~ Business factor. – Data that reflect the use of the company's property, such as gross revenue, net income, tons of freight carried, revenue ton miles, passenger miles, car miles, ground hours, and comparable data.

(2) ~~The term "mileage factor" means factual~~ Mileage factor. – Factual information as to the linear miles of the company's track, wire, lines, pipes, routes, and similar operational routes and factual information as to the miles traveled by the company's rolling stock.

(3) ~~The term "property factor" means investment~~ Property factor. – Investment in property; it may be either gross or net investment or any other reasonable figure reflecting the company's investment in property."

SECTION 11.1.(e) G.S. 105-338 reads as rewritten:

"§ 105-338. **Allocation of appraised valuation of ~~system~~ public service property among local taxing units.**

(a) State Board's Duty. – For purposes of taxation by local taxing units in this State, the Department of Revenue shall allocate the valuations of public service company property among the local taxing units in accordance with the provisions of this section.

(b) System Valuation of Companies Other Than Those Noted in Subsection (c). –

...

(3) System Property of Other Companies Appraised by the Department of Revenue. –

a. The provisions of this subdivision ~~(b)(3) shall~~ govern the allocation of the property of all companies appraised by the Department of Revenue except railroad, telephone, bus line, motor freight carrier, ~~and~~ airline ~~companies.~~companies, mobile telecommunications companies, and tower aggregator companies.

b. The appraised valuation of the system property of such a company ~~shall be~~ is allocated for taxation to the local taxing units in which the company operates in the proportion that the original cost of the taxable system property in the local taxing unit on January 1 bears to the original cost of all the taxable system property in this State. If in any local taxing unit the company owns system property acquired prior to January 1, 1972, for which the original cost cannot be definitely ascertained, the company shall make a reasonable estimate of the original cost of that ~~property shall be made by the company,~~ property, and the Department shall use this estimate ~~shall be used by the Department of Revenue~~ for allocation purposes as if it were the actual original cost of the property.

(c) Certain Property of Bus Line, Motor Freight Carrier, ~~and Airline~~ Airline, and Mobile Telecommunications Companies. –

(1) The appraised valuation of a bus line company's rolling stock ~~shall be~~ is allocated for taxation to each local taxing unit according to the ratio of the company's scheduled miles during the calendar year preceding January 1 in each ~~such~~ unit to the company's total scheduled miles in this State for the same period. In no event, however, shall the State Board make an allocation to a taxing unit if, when computed, the valuation for that taxing unit amounts to less than five hundred dollars ($500.00).

(2) The appraised valuation of the rolling stock (other than locally assigned rolling stock) owned or leased by a motor freight carrier company ~~shall be~~ is allocated for taxation to each local taxing unit in which the company has a terminal according to the ratio of the tons of freight handled in the calendar year preceding January 1 at the company's terminals within the taxing unit to the total tons of freight handled by the company in this State in the same period. If a North

Carolina interstate motor freight carrier company has no terminal outside this State, but has been required to pay ad valorem tax to one or more taxing units outside this State, ~~there shall be allowed~~ a reduction is allowed in the North Carolina valuation measured by the ratio of the rolling stock subject to ad valorem taxation outside the State to all of the carrier's rolling stock.

(3) The appraised valuation of an airline company's flight equipment ~~shall be~~ is allocated for taxation to each local taxing unit in which an airport used by the company is situated according to the ratio obtained by averaging the following two ratios: the ratio of the company's ground hours in the taxing unit in the year preceding January 1 to the company's ground hours in the State in the same period, and the ratio of the company's gross revenue in the taxing unit in the year preceding January 1 to the company's gross revenue in the State in the same period.

(4) The appraised valuation of the tangible personal property of a mobile telecommunications company (excluding towers) that is appraised in accordance with the provisions of G.S. 105-336(c) is allocated among the local taxing units in which the property of the company is situated on January 1 in the proportion that the original cost of the property in the taxing unit bears to the original cost of all such property in this State."

SECTION 11.1.(f) G.S. 105-339 reads as rewritten:

"**§ 105-339. Certification of appraised valuations of nonsystem property and locally assigned rolling ~~stock.~~stock, tangible personal property of tower aggregator companies, and certain tangible personal property of mobile telecommunications companies.**

Having determined the appraised valuations of the nonsystem properties of public service companies in accordance with subdivisions (b)(2) and (b)(3) of G.S. 105-335 and the appraised valuations of locally assigned rolling stock in accordance with subdivision (c)(1) of G.S. 105-335, the appraised valuations of the tangible personal property of tower aggregator companies in accordance with G.S. 105-336(d) and the appraised valuations of towers of mobile telecommunications companies in accordance with G.S. 105-336(d), the Department of Revenue shall assign those appraised valuations to the taxing units in which such properties are situated by certifying the valuations to the appropriate counties and municipalities. Each local taxing unit receiving such certified valuations shall assess them at the figures certified and shall tax the assessed valuations at the rate of tax levied against other property subject to taxation therein."

SECTION 11.1.(g) Article 23 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"**§ 105-339A. Certification of appraised valuations of mobile telecommunications companies.**

Having determined the appraised valuations of the tangible personal property of mobile telecommunications companies (excluding towers) in accordance with subdivision (c) of G.S. 105-335 and having allocated the valuations to the local taxing

units in accordance with subdivision (c)(4) of G.S. 105-338, the Department of Revenue shall assign each local taxing unit's appraised valuations by certifying the valuations to the appropriate counties and municipalities. Each local taxing unit receiving these certified valuations shall assess them at the figures certified and shall tax the assessed valuations at the rate of tax levied against other property subject to taxation therein."

SECTION 11.1.(h) This Part is effective for taxes imposed for taxable years beginning on or after July 1, 2015.

PART XII. PRIVILEGE LICENSE TAX CHANGES

SECTION 12.1.(a) G.S. 160A-211(a) is reenacted as amended by Section 58(d) of S.L. 2013-414.

SECTION 12.1.(b) This section is effective when this act becomes law.

SECTION 12.2.(a) G.S. 160A-211 is repealed.

SECTION 12.2.(b) Article 9 of Chapter 160A is amended by adding a new section to read:

"**§ 160A-211.2. Local business tax.**

(a) Levy and Scope. – A city may levy an annual tax on each business operating within the city. The tax applies to each business location and does not apply to each individual employed by or affiliated with that business. Except as provided in G.S. 160A-211.1 for low-level radioactive and hazardous waste facilities, the rate of tax may not exceed one hundred dollars ($100.00).

(b) Prohibition. – A city may not impose a license, franchise, privilege, or business tax on a business engaged in any of the activities listed in this subsection. These businesses are subject to sales tax at the combined general rate for which the city receives a share of the tax revenue or they are subject to the local sales tax:

(1) Supplying piped natural gas.

(2) Providing telecommunications service taxed under G.S. 105-164.4(a)(4c).

(3) Providing video programming taxed under G.S. 105-164.4(a)(6).

(4) Providing electricity.

(c) Administration. – If a city levies a tax under this section, a business must pay the tax before it begins to operate within the city. The tax is due by July 1 of each year. The full amount of the tax applies to a business that begins to operate at any time during the fiscal year. If a business is discontinued during the fiscal year, the business is not entitled to a refund.

(d) Penalties and Collection. – The penalties in G.S. 105-236 apply to this section. A city may collect a tax due in any manner allowed under this Article.

(e) Definitions. – The following definitions apply in this section:

(1) Business. – A retailer, wholesale merchant, service provider, manufacturer, nonprofit other than a 501(c)(3), or franchise, whether it is a sole proprietorship, partnership, LLC, or corporation; whether it is home-based or at another location, whether it is full-time, part-time, or seasonal, and regardless of size.

(2) Location. – A uniquely identifiable geographic site or place from which one or more business units wholly or partly operates on a permanent or temporary basis."

SECTION 12.2.(c) G.S. 105-41(h), 105-83(e), 105-88(e), 105-109(e), and G.S. 106-65.40 are repealed.

SECTION 12.2.(d) G.S. 105-113.3(a) reads as rewritten:

"(a) Scope. – The taxes imposed by this Article shall be collected only once on the same tobacco product. ~~Except as permitted by Article 2 of this Chapter, a city or county may not levy a privilege license tax on the sale of tobacco products.~~"

SECTION 12.2.(e) G.S. 105-102.3 reads as rewritten:

"**§ 105-102.3. Banks.**

~~There~~ An annual privilege tax is imposed upon every bank or banking association, including each national banking association, that is operating in this State as a commercial bank, an industrial bank, a savings bank created other than under Chapter 54B or 54C of the General Statutes or the Home Owners' Loan Act of 1933 (12 U.S.C. §§ 1461-68), a trust company, or any combination of such facilities or services, and whether ~~such~~ the bank or banking association, hereinafter ~~to be~~ referred to as a bank or banks, is organized, under the laws of the United States or the laws of North Carolina, in the corporate form or in some other form of business ~~organization, an annual privilege tax.~~ organization. A report and the privilege tax are due by the first day of July of each year on forms provided by the Secretary. The tax rate is thirty dollars ($30.00) for each one million dollars ($1,000,000) or fractional part thereof of total assets held as provided in this section. The assets upon which the tax is levied ~~shall be~~ are determined by averaging the total assets shown in the four quarterly call reports of condition (consolidating domestic subsidiaries) for the preceding calendar year as required by bank regulatory authorities. If a bank has been in operation less than a calendar year, then the assets upon which the tax is levied ~~shall be~~ are determined by multiplying the average of the total assets by a fraction, the denominator of which is 365 and the numerator of which is the number of days of operation. If a bank operates an international banking facility, as defined in G.S. 105-130.5(b)(13), the assets upon which the tax is levied ~~shall be~~ are reduced by the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States, as computed pursuant to G.S. 105-130.5(b)(13)c. For an out-of-state bank with one or more branches in this State, or for an in-state bank with one or more branches outside this State, the assets of the out-of-state bank or of the in-state bank upon which the tax is levied ~~shall be~~ are reduced by the average amount for the taxable year of all assets of the out-of-state bank or of the in-state bank which are employed outside this State. The tax imposed in this section ~~shall be~~ is for the privilege of carrying on the businesses herein defined on a statewide basis regardless of the number of places or locations of business within the State. ~~Counties and cities may not levy a license or privilege tax on the businesses taxed under this section, nor on the business of an international banking facility as defined in subdivision (b)(13) of G.S. 105-130.5.~~"

SECTION 12.2.(f) G.S. 160A-194(a) reads as rewritten:

"(a) A city may by ordinance, subject to the general law of the State, regulate and license occupations, businesses, trades, professions, and forms of amusement or entertainment and prohibit those that may be inimical to the public health, welfare, safety, order, or convenience. In licensing trades, occupations, and professions, the city may, consistent with the general law of the State, require applicants for licenses to be examined and charge a reasonable fee therefor. Nothing in this section shall impair the

city's power to levy ~~privilege license taxes~~ a tax on ~~occupations, businesses, trades, professions, and other activities pursuant to G.S. 160A-211.~~businesses under G.S. 160A-211.2."

SECTION 12.2.(g) G.S. 160A-215.1(a) reads as rewritten:

"(a) As a substitute for and in replacement of the ad valorem tax, which is excluded by G.S. 105-275(42), a city may levy a gross receipts tax on the gross receipts from the short-term lease or rental of vehicles at retail to the general public. The tax rate shall not exceed one and one-half percent (1.5%) of the gross receipts from such short-term leases or rentals. This tax on gross receipts is in addition to the ~~privilege taxes~~ tax authorized by ~~G.S. 160A-211.~~G.S. 160A-211.2."

SECTION 12.2.(h) This section becomes effective July 1, 2015.

SECTION 12.3.(a) G.S. 153A-152 is repealed.

SECTION 12.3.(b) G.S. 153A-49 reads as rewritten:

"**§ 153A-49. Code of ordinances.**

A county may adopt and issue a code of its ordinances. The code may be reproduced by any method that gives legible and permanent copies, and may be issued as a securely bound book or books with periodic separately bound supplements, or as a loose-leaf book maintained by replacement pages. Supplements or replacement pages should be adopted and issued at least annually, unless there have been no additions to or modifications of the code during the year.

A code may consist of two parts, the "General Ordinances" and the "Technical Ordinances." The technical ordinances may be published as separate books or pamphlets, and may include ordinances regarding the construction of buildings, the installation of plumbing and electric wiring, and the installation of cooling and heating equipment; ordinances regarding the use of public utilities, buildings, or facilities operated by the county; the zoning ordinance; the subdivision control ordinance; ~~the privilege license tax ordinance;~~ and other similar ordinances designated as technical ordinances by the board of commissioners. The board may omit from the code the budget ordinance, any bond orders, and other designated classes of ordinances of limited interest or transitory nature, but the code shall clearly describe the classes of ordinances omitted from it.

The board of commissioners may provide that ordinances (i) establishing or amending the boundaries of county zoning areas or (ii) establishing or amending the boundaries of zoning districts shall be codified by appropriate entries upon official map books to be retained permanently in the office of the clerk or some other county office generally accessible to the public."

SECTION 12.3.(c) This section becomes effective July 1, 2015.

PART XIII. LICENSE PLATE AGENT COMPENSATION

SECTION 13.1.(a) Section 2(c) of S.L. 2013-372 reads as rewritten:

"**SECTION 2.(c)** Notwithstanding G.S. 20-63(h), as amended by subsection (a) of this section, the transaction rate of one dollar and six cents ($1.06) applies to the collection of property tax by commission contractors for vehicles whose registration renewals expire on or between September 30, 2013, and ~~February 28, 2014.~~June 30, 2014."

SECTION 13.1.(b) The Division of Motor Vehicles must compensate license plate agents the additional fee for the collection of property taxes as provided in this section. For the period between March 1, 2014, and the date the Division of Motor Vehicles is able to implement the additional fee, the Division must calculate the difference in the fee for agents contracting with the Division authorized by this section and the fee authorized in S.L. 2013-372. The Division must calculate the difference by September 1, 2014. The difference in the fee must be paid to the agents by reducing future remittances of tax payments to counties and municipalities under the Tax and Tag Together Program in equal amounts over a three month period.

SECTION 13.2. G.S. 20-63(h) reads as rewritten:

"(h) Commission Contracts for Issuance of Plates and Certificates. – All registration plates, registration certificates, and certificates of title issued by the Division, outside of those issued from the office of the Division located in Wake, Cumberland, or Mecklenburg Counties and those issued and handled through the United States mail, shall be issued insofar as practicable and possible through commission contracts entered into by the Division for the issuance of the plates and certificates in localities throughout North Carolina, including military installations within this State, with persons, firms, corporations or governmental subdivisions of the State of North Carolina. The Division shall make a reasonable effort in every locality, except as noted above, to enter into a commission contract for the issuance of the plates and certificates and a record of these efforts shall be maintained in the Division. In the event the Division is unsuccessful in making commission contracts, it shall issue the plates and certificates through the regular employees of the Division. Whenever registration plates, registration certificates, and certificates of title are issued by the Division through commission contract arrangements, the Division shall provide proper supervision of the distribution. Nothing contained in this subsection ~~will allow or permit~~ allows or permits the operation of fewer outlets in any county in this State than are now being operated.

Commission contracts entered into by the Division under this subsection shall provide for the payment of compensation on a per transaction basis. The collection of the highway use tax is considered a separate transaction for which one dollar and twenty-seven cents ($1.27) compensation shall be paid. The issuance of a limited registration "T" sticker and the collection of property tax are each considered a separate transaction for which compensation at the rate of one dollar and twenty-seven cents ($1.27) and ~~seventy-one cents ($0.71),~~ one dollar and six cents ($1.06) respectively, shall be paid by counties and municipalities as a cost of the combined motor vehicle registration renewal and property tax collection system. The performance at the same time of one or more of the transactions below is considered a single transaction for which one dollar and forty-three cents ($1.43) compensation shall be paid:

(1) Issuance of a registration plate, a registration card, a registration sticker, or a certificate of title.
(2) Issuance of a handicapped placard or handicapped identification card.
(3) Acceptance of an application for a personalized registration plate.
(4) Acceptance of a surrendered registration plate, registration card, or registration renewal sticker, or acceptance of an affidavit stating why a person cannot surrender a registration plate, registration card, or registration renewal sticker.

(5) Cancellation of a title because the vehicle has been junked.
(6) Acceptance of an application for, or issuance of, a refund for a fee or a tax, other than the highway use tax.
(7) Receipt of the civil penalty imposed by G.S. 20-311 for a lapse in financial responsibility or receipt of the restoration fee imposed by that statute.
(8) Acceptance of a notice of failure to maintain financial responsibility for a motor vehicle.
(8a) Collection of civil penalties imposed for violations of G.S. 20-183.8A.
(8b), (9) Repealed by Session Laws 2013-372, s. 2(a), effective July 1, 2013.
(10) Acceptance of a temporary lien filing."

SECTION 13.3. G.S. 105-330.5(b) reads as rewritten:

"(b) Distribution and Collection Fees. – The Property Tax Division of the Department of Revenue or a third-party contractor selected by the Property Tax Division must send a copy of the combined tax and registration notice for a registered classified motor vehicle to the motor vehicle owner, as defined in G.S. 20-4.01. The Department must establish a fee equal to the actual cost of preparing, printing, and sending the notice. The Department may receive a fee for each notice generated for a vehicle registered in a county or municipal corporation from the taxes and fees remitted to the county or municipal corporation in which the vehicle is registered. The collecting authority is responsible for collecting county and municipal taxes and fees assessed under this Article and may receive a fee for collecting these taxes and fees. The amount of this fee for an agent contracting with the Division of Motor Vehicles must equal at least the applicable amount set under G.S. 20-63(h). The amount of this fee for the Division of Motor Vehicles is the amount set by the memorandum of understanding entered into under G.S. 105-330.11 but shall not exceed the amount set under G.S. 20-63. The Property Tax Division must establish procedures to ensure that tax payments and fees received pursuant to this Article and Chapter 20 of the General Statutes are properly accounted for and taxes and fees due other taxing units and the Division of Motor Vehicles are remitted at least once each month."

SECTION 13.4. Section 34.17 of S.L. 2013-360 directs the Department of Transportation to evaluate current contractual models and compensation for the provision of registration, title, tax collection, and other vehicle service transactions by branch agents contracting with the Division of Motor Vehicles. The Department of Transportation shall provide to the Revenue Laws Study Committee any reports, recommendations, and findings that are a result of the study required under this section. The Department of Transportation shall also provide to each member of the Revenue Laws Study Committee a copy of any final report issued as a result of the study. The Revenue Laws Study Committee is directed to examine the information provided by the Department of Transportation and make an interim report of its findings and recommendations on the per transaction compensation amounts to the 2015 Regular Session of the 2015 General Assembly and shall make a final report to the 2016 Regular Session of the 2015 General Assembly.

SECTION 13.5. Section 13.1 of this Part is effective March 1, 2014. Sections 13.2 and 13.3 of this Part become effective July 1, 2014, and apply to

collections of property tax on or after that date. The remainder of this Part is effective when it becomes law.

PART XIV. TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES

SECTION 14.1. G.S. 105-114(b)(4) reads as rewritten:

"(4) Income year. – Defined in ~~G.S. 105-130.2(4b).~~G.S. 105-130.2(10)."

SECTION 14.2. G.S. 105-129.26(a) reads as rewritten:

"(a) Major Recycling Facility. – A recycling facility qualifies for the tax benefits provided in this Article and in Article 5 of this Chapter for major recycling facilities if it meets all of the following conditions:

(1) The facility is located in an area that, at the time the owner began construction of the facility, was ~~an enterprise tier one area pursuant to G.S. 105-129.3.~~a development tier one area as defined in G.S. 143B-437.08.

(2) The Secretary of Commerce has certified that the owner will, by the end of the fourth year after the year the owner begins construction of the recycling facility, invest at least three hundred million dollars ($300,000,000) in the facility and create at least 250 new, full-time jobs at the facility.

~~(3) The jobs at the recycling facility meet the wage standard in effect pursuant to G.S. 105-129.4(b) as of the date the owner begins construction of the facility.~~"

SECTION 14.3. G.S. 105-130.5(b) reads as rewritten:

"(b) The following deductions from federal taxable income shall be made in determining State net income:

...

(4) Losses in the nature of net economic losses sustained by the corporation in any or all of the 15 preceding years pursuant to the provisions of G.S. 105-130.8. A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable and apportionable net economic loss only from total income allocable and apportionable to this State pursuant to the provisions of G.S. 105-130.8.

...."

SECTION 14.4.(a) G.S. 105-163.1(3) is repealed.

SECTION 14.4.(b) G.S. 105-163.5(b) reads as rewritten:

"(b) Every employee ~~shall,~~ must, at the time of commencing employment, furnish his or her employer with a signed withholding ~~exemption~~ allowance certificate informing the employer of the ~~exemptions~~ allowances the employee claims, which ~~in no event shall~~ may not exceed the amount of ~~exemptions~~ allowances to which the employee is entitled under the Code. If the employee fails to file the ~~exemption certificate the employer, in computing amounts to be withheld from the employee's wages, shall allow the employee the exemption accorded a single person with no dependents.~~allowance certificate, the employer must compute the amount to be withheld from the employee's wages as if the employee were a single individual with no allowances."

SECTION 14.5.(a) G.S. 105-163.2 reads as rewritten:

"**§ 105-163.2. Employers must withhold taxes.**

(a) Withholding Required. – An employer shall deduct and withhold from the wages of each employee the State income taxes payable by the employee on the wages. For each payroll period, the employer shall withhold from the employee's wages an amount that would approximate the employee's income tax liability under Article 4 of this Chapter if the employer withheld the same amount from the employee's wages for each similar payroll period in a calendar year. In calculating an employee's anticipated income tax liability, the employer shall allow for the ~~exemptions,~~ additions, deductions, and credits to which the employee is entitled under Article 4 of this Chapter. The amount of State income taxes withheld by an employer is held in trust for the Secretary.

(b) Withholding Tables. – The manner of withholding and the amount to be withheld shall be determined in accordance with tables and rules adopted by the Secretary. The withholding ~~exemption allowed~~ allowances provided by these tables and rules shall, as nearly as possible, approximate the ~~exemptions,~~ additions, deductions, and credits to which an employee would be entitled under Article 4 of this Chapter. The Secretary shall promulgate tables for computing amounts to be withheld with respect to different rates of wages for different payroll periods applicable to the various combinations of ~~exemptions~~ allowances to which an employee may be entitled and taking into account the appropriate standard deduction. The tables may provide for the same amount to be withheld within reasonable salary brackets or ranges so designed as to result in the withholding during a year of approximately the amount of an employee's indicated income tax liability for that year. The withholding of wages pursuant to and in accordance with these tables shall be deemed as a matter of law to constitute compliance with the provisions of subsection (a) of this section, notwithstanding any other provisions of this Article.

...."

SECTION 14.5.(b) G.S. 105-163.5 reads as rewritten:

"**§ 105-163.5. Employee ~~exemptions allowable;~~ withholding allowances; certificates.**

(a) An employee receiving wages is entitled to the ~~exemptions for which the employee qualifies under Article 4 of this Chapter.~~withholding allowances that would result in the employer withholding approximately the employee's income tax liability under Article 4 of this Chapter.

(b) Every employee shall, at the time of commencing employment, furnish his or her employer with a signed withholding ~~exemption~~ allowance certificate informing the employer of the ~~exemptions~~ allowances the employee ~~claims, which in no event shall exceed the amount of exemptions to which the employee is entitled under the Code.~~ claims. If the employee fails to file the allowance~~exemption~~ certificate the employer, in computing amounts to be withheld from the employee's wages, shall allow the employee the ~~exemption~~ allowances accorded a single person with no dependents.

(c) Withholding ~~exemption~~ allowance certificates shall take effect as of the beginning of the first payroll period that ends on or after the date on which the certificate is furnished, or if payment of wages is made without regard to a payroll period, then the certificate shall take effect as of the beginning of the miscellaneous

payroll period for which the first payment of wages is made on or after the date on which the certificate is furnished.

(d) If, on any day during the calendar year, the amount of withholding ~~exemptions~~ allowances to which the employee is entitled is less than the amount of withholding ~~exemptions~~ allowances claimed by the employee on the withholding ~~exemption~~ allowance certificate then in effect with respect to the employee, the employee shall, within 10 days thereafter, furnish the employer with a new withholding ~~exemption~~ allowance certificate stating the amount of withholding ~~exemptions~~ allowances which the employee then claims, which shall in no event exceed the amount to which the employee is entitled on that day. If, on any day during the calendar year, the amount of withholding ~~exemptions~~ allowances to which the employee is entitled is greater than the amount of withholding ~~exemptions~~ allowances claimed, the employee may furnish the employer with a new withholding ~~exemption~~ allowance certificate stating the amount of withholding ~~exemptions which~~ allowances that the employee then claims, which shall ~~in no event~~ not exceed the amount to which the employee is entitled on that day.

(e) Withholding ~~exemption~~ allowance certificates must be in the form and contain the information required by the Secretary. ~~As far as practicable, the Secretary shall cause the form of the certificates to be substantially similar to federal exemption certificates.~~

(f) In addition to any criminal penalty provided by law, if an individual furnishes his or her employer an ~~exemption~~ allowance certificate that contains information ~~which~~ that has no reasonable basis and that results in a lesser amount of tax being withheld under this Article than would have been withheld if the individual had furnished reasonable information, the individual is subject to a penalty of fifty percent (50%) of the amount not properly withheld."

SECTION 14.6. G.S. 105-163.2A(c) reads as rewritten:

"(c) Amount. – In the case of a periodic payment, the pension payer must withhold the amount that would be required to be withheld under this Article if the payment were a payment of wages by an employer to an employee for the appropriate payroll period. ~~If the recipient of periodic payments fails to file an exemption certificate under G.S. 105-163.5, the pension payer must compute the amount to be withheld as if the recipient were a married individual claiming three withholding exemptions.~~

In the case of a nonperiodic distribution, the pension payer must withhold taxes equal to four percent (4%) of the nonperiodic distribution."

SECTION 14.7. G.S. 105-164.3 reads as rewritten:

"**§ 105-164.3. Definitions.**

The following definitions apply in this Article:

...

(24) Net taxable sales. – The gross ~~retail~~ sales of the business of a retailer taxed under this Article after deducting exempt sales and nontaxable sales.

...

(35) Retailer. – A person engaged in ~~the~~ business of any of the following:

a. Making sales at retail, offering to make sales at retail, or soliciting sales at retail of tangible personal property, digital

property, or services for storage, use, or consumption in this State. When the Secretary finds it necessary for the efficient administration of this Article to regard any sales representatives, solicitors, representatives, consignees, peddlers, or truckers as agents of the dealers, distributors, consignors, supervisors, employers, or persons under whom they operate or from whom they obtain the items sold by them regardless of whether they are making sales on their own behalf or on behalf of these dealers, distributors, consignors, supervisors, employers, or persons, the Secretary may so regard them and may regard the dealers, distributors, consignors, supervisors, employers, or persons as "retailers" for the purpose of this Article.

b. Delivering, erecting, installing, or applying tangible personal property for use in this State, regardless of whether the property is permanently affixed to real property or other tangible personal property.

c. Making a remote sale, if one of the conditions listed in G.S. 105-164.8(b) is met.

...."

SECTION 14.8. G.S. 105-164.4 reads as rewritten:

"**§ 105-164.4. Tax imposed on retailers.**

(a) A privilege tax is imposed on a retailer engaged in business in the State at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and three-quarters percent (4.75%).

...

(2) The applicable percentage rate applies to the gross receipts derived from the lease or rental of tangible personal property by a person who is engaged in ~~the~~ business of leasing or renting tangible personal property, or is a retailer and leases or rents property of the type sold by the retailer. The applicable percentage rate is the rate and the maximum tax, if any, that applies to a sale of the property that is leased or rented. A person who leases or rents property shall also collect the tax imposed by this section on the separate retail sale of the property.

...

(4b) A person who sells tangible personal property at a specialty ~~market,~~ market or other event, other than the person's own household personal property, is considered a retailer under this Article. A tax at the general rate of tax is levied on the sales price of each article sold by the retailer at the specialty ~~market.~~ market or other event. The term "specialty market" has the same meaning as defined in G.S. 66-250.

...

(4d) The general rate applies to the gross receipts derived from the sale or recharge of prepaid telephone calling ~~service is taxable at the general rate of tax.~~ service. The tax applies regardless of whether tangible

personal property, such as a card or a telephone, is transferred. The tax applies to a service that is sold in conjunction with prepaid wireless calling service. Prepaid telephone calling service is taxable at the point of sale instead of at the point of use and is sourced in accordance with G.S. 105-164.4B. Prepaid telephone calling service taxed under this subdivision is not subject to tax as a telecommunications service.

...

(b) The tax levied in this section shall be collected from the retailer and paid by him at the time and in the manner as hereinafter provided. ~~Provided, however, that any~~ A person engaging ~~or continuing~~ in business as a retailer shall pay the tax required on the net taxable sales of ~~such~~ the business at the rates specified when proper books are kept showing separately the gross proceeds of taxable and nontaxable sales of ~~tangible personal property~~ items subject to tax under subsection (a) of this section in ~~such~~ a form ~~as~~ that may be accurately and conveniently checked by the Secretary or ~~his~~ the Secretary's duly authorized agent. If ~~such~~ the records are not kept ~~separately~~ separately, the tax shall be paid ~~as a retailer~~ on the gross sales of the business and the exemptions and exclusions provided by this Article ~~shall not be~~ are not allowed. The tax levied in this section is in addition to all other taxes whether levied in the form of excise, ~~license or privilege or other taxes.~~license, privilege, or other taxes.

(c) Certificate of Registration. – Before a person may engage in business as a retailer or a wholesale ~~merchant,~~ merchant in this State, the person must obtain a certificate of registration from the Department in accordance with G.S. 105-164.29. A facilitator that is liable for tax under G.S. 105-164.4F must obtain a certificate of registration from the Department in accordance with G.S. 105-164.29."

SECTION 14.9.(a) G.S. 105-164.6(f) reads as rewritten:

"(f) Registration. – A person must obtain a certificate of registration in accordance with G.S. 105-164.29 under any of the following circumstances:

(1) Before ~~a~~ the person ~~may engage~~ engages in business in this State selling or delivering tangible personal property, digital property, or a service for storage, use, or consumption in this ~~State, the person must obtain a certificate of registration from the Department.~~ State. ~~To obtain a certificate of registration, a person must register with the Department.~~

(2) If the person is a facilitator that is liable for tax pursuant to G.S. 105-164.4F.

~~The holder of the certificate of registration must pay the tax levied under this Article. A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer becomes void if, for a period of 18 months, the retailer files no returns or files returns showing no sales.~~"

SECTION 14.9.(b) G.S. 105-164.29 reads as rewritten:

"**§ 105-164.29. Application for certificate of registration by wholesale ~~merchants and retailers.~~merchants, retailers, and facilitators.**

(a) Requirement and Application. – Before a person may engage in business as a retailer or a wholesale ~~merchant,~~ merchant or when a facilitator is liable for tax under G.S. 105-164.4F, the person must obtain a certificate of registration. To obtain a

certificate of registration, a person must register with the Department. A ~~wholesale merchant or retailer~~ person who has more than one business is required to obtain only one certificate of registration for each legal entity to cover all operations of ~~the~~ each business throughout the State. An application for registration must be signed as follows:

(1) By the owner, if the owner is an individual.

(2) By a manager, member, or partner, if the owner is an association, a partnership, or a limited liability company.

(3) By an executive officer or some other person specifically authorized by the corporation to sign the application, if the owner is a corporation. If the application is signed by a person authorized to do so by the corporation, written evidence of the person's authority must be attached to the application.

(b) Issuance. – A certificate of registration is not assignable and is valid only for the person in whose name it is issued. A copy of the certificate of registration must be displayed at each place of business.

(c) Term. – A certificate of registration is valid unless it is revoked for failure to comply with the provisions of this Article or becomes void. A certificate issued to a retailer who makes taxable sales or a facilitator liable for tax under G.S. 105-164.4F becomes void if, for a period of 18 months, the retailer or facilitator files no returns or files returns showing no sales.

(d) Revocation. – The failure of a wholesale merchant or retailer to comply with this Article or G.S. 14-401.18 or the failure of a facilitator to comply with this Article is grounds for revocation of the ~~wholesale merchant's or retailer's~~ person's certificate of registration. Before the Secretary revokes a ~~wholesale merchant's or retailer's~~ person's certificate of registration, the Secretary must notify the ~~wholesale merchant or retailer~~ person that the Secretary proposes to revoke the certificate of registration and that the proposed revocation will become final unless the ~~wholesale merchant or retailer~~ person objects to the proposed revocation and files a request for a Departmental review within the time set in G.S. 105-241.11 for requesting a Departmental review of a proposed assessment. The notice must be sent in accordance with the methods authorized in G.S. 105-241.20. The procedures in Article 9 of this Chapter for review of a proposed assessment apply to the review of a proposed revocation.

(e) Definition. – For purposes of this section, the term "person" means a wholesale merchant, a retailer, or a facilitator."

SECTION 14.10. Article 5 of Chapter 105 of the General Statutes is amended by adding a new statutory section to read:

"**§ 105-164.45. Applicable due date when due date falls on a weekend, holiday, or when the Federal Reserve Bank is closed.**

(a) Weekends and Holidays. – When the last day for doing an act required or permitted by this Article or Subchapter VIII of this Chapter falls on a Saturday, Sunday, or holiday, the act is considered to be done within the prescribed time limit if it is done on the next business day.

(b) Federal Reserve Bank Closure. – If the Federal Reserve Bank is closed on a due date that prohibits a person from making a payment by ACH debit or credit as required by this Article or Subchapter VIII of this Chapter, the payment is timely if made on the next day the Federal Reserve Bank is open."

SECTION 14.11. G.S. 105-228.4A(c) reads as rewritten:

"(c) Administration. – The definitions in G.S. 58-10-340 apply in this section. A company subject to this section must file with the Secretary a full and accurate report of the premiums contracted for or collected on policies or contracts of insurance written by the company during the preceding calendar year. In the case of a multiyear policy or contract, the premiums must be prorated among the years covered by the policy or contract. The report is due on or before ~~March 1.~~ March 15. The taxes imposed by this section are due to the Secretary with the report."

SECTION 14.12. G.S. 105-236.1(a) reads as rewritten:

"(a) General. – The Secretary may appoint employees of the Unauthorized Substances Tax Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the excise tax on unauthorized substances imposed by Article 2D of this Chapter.

The Secretary may appoint up to 11 employees of the Motor Fuels Investigations Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the taxes on motor fuels imposed by Articles 36B, 36C, and 36D of this Chapter and by Chapter 119 of the General Statutes.

The Secretary may appoint employees of the Criminal Investigations Section of the Tax Enforcement Division to serve as revenue law enforcement officers having the responsibility and subject-matter jurisdiction to enforce the following tax violations and criminal offenses:

(1) The felony and misdemeanor tax violations in G.S. 105-236.

(2) The misdemeanor tax violations in G.S. 105-449.117 and G.S. 105-449.120.

(3) The following criminal offenses when they involve a tax imposed under Chapter 105 of the General Statutes:

a. G.S. 14-91 (Embezzlement of State Property).

b. G.S. 14-92 (Embezzlement of Funds).

c. G.S. 14-100 (Obtaining Property By False Pretenses).

c1. G.S. 14-113.20 (Identity Theft).

c2. ~~G.S. 14-133.20A~~ G.S. 14-113.20A (Trafficking in Stolen Identities).

d. G.S. 14-119 (Forgery).

e. G.S. 14-120 (Uttering Forged Paper).

f. G.S. 14-401.18 (Sale of Certain Packages of Cigarettes).

(g) G.S. 14-118.7 (Possession, transfer, or use of automated sales suppression device)."

SECTION 14.13.(a) All amended returns under G.S. 105-116 must be filed within three years from the due date of the original return. The Department must process amended returns under G.S. 105-116 within six months of receipt of the return. When the Department processes an amended franchise tax return under G.S. 105-116 that changes the taxable gross receipts of electricity derived within a city so that the amount that should have been distributed to that city under G.S. 105-116.1 for distributions made on or before September 30, 2014, is greater than or less than the amount actually distributed to that city, the Department of Revenue must adjust the next

quarterly distribution under G.S. 105-164.44K by the applicable amount and redetermine the franchise tax share for that city based upon the amended return in accordance with subsection (b) of this section. The Department of Revenue must draw the funds needed to make an increased distribution from sales and use tax collections under Article 5 of Chapter 105 of the General Statutes.

SECTION 14.13.(b) The Department of Revenue must determine the quarterly franchise tax share a city is eligible to receive under G.S. 105-164.44K(b) for each quarter of the fiscal year on or before September 15 for the fiscal year that began the preceding July 1. The Department must include all amended franchise tax returns under G.S. 105-116 processed by the Department by the preceding July 31 in the franchise tax share determination. The determination made by the Department with respect to the city's franchise tax share for that fiscal year is final. The distributions are payable as provided in G.S. 105-164.44K.

SECTION 14.13.(c) All amended returns under G.S. 105-187.41 must be filed within three years from the due date of the original return. The Department must process amended returns under G.S. 105-187.41 within six months of receipt of the return. When the Department processes an amended excise tax return under G.S. 105-187.41 that changes the amount of the tax attributable to a city so that the amount that should have been distributed to that city under G.S. 105-187.44 for distributions made on or before September 30, 2014, is greater than or less than the amount actually distributed to that city, the Department of Revenue must adjust the next quarterly distribution under G.S. 105-164.44L for the city by the applicable amount and redetermine the excise tax share for that city based upon the amended return in accordance with subsection (b) of this section. The Department of Revenue must draw the funds needed to make an increased distribution from sales and use tax collections under Article 5 of Chapter 105 of the General Statutes.

SECTION 14.13.(d) The Department of Revenue must determine the quarterly excise tax share a city is eligible to receive under G.S. 105-164.44L(b) for each quarter of the fiscal year on or before September 15 for the fiscal year that began the preceding July 1. The Department must include all amended excise tax returns under G.S. 105-187.41 processed by the Department by the preceding July 31 in the excise tax share determination. The determination made by the Department with respect to the city's franchise tax share for that fiscal year is final. The distributions are payable as provided in G.S. 105-164.44L.

SECTION 14.13.(e) G.S. 105-164.44K(c) reads as rewritten:

"(c) Ad Valorem Share. – The ad valorem share of a city is its proportionate share of the amount that remains for distribution after determining each city's franchise tax share under subsection (b) of this section. Only cities that received a franchise tax share under subsection (b) of this section are eligible to receive an ad valorem share. The prohibitions in G.S. 105-472(d) on the receipt of funds by a city apply to the distribution under this subsection.

A city's proportionate share is the amount of ad valorem taxes it levies on property having a tax situs in the city compared to the ad valorem taxes levied by all cities on property having a tax situs in the cities. The ad valorem method set out in G.S. 105-472(b)(2) applies in determining the share of a city under this subsection based on ad valorem taxes, except that the amount of ad valorem taxes levied by a city

does not include ad valorem taxes levied on behalf of a taxing district and collected by the city."

SECTION 14.13.(f) G.S. 105-164.44L(c) reads as rewritten:

"(c) Ad Valorem Share. – The ad valorem share of a city is its proportionate share of the amount that remains for distribution after determining each city's excise tax share under subsection (b) of this section. Only cities that received a franchise tax share under subsection (b) of this section are eligible to receive an ad valorem share. The prohibitions in G.S. 105-472(d) on the receipt of funds by a city apply to the distribution under this subsection.

A city's proportionate share is the amount of ad valorem taxes it levies on property having a tax situs in the city compared to the ad valorem taxes levied by all cities on property having a tax situs in the cities. The ad valorem method set out in G.S. 105-472(b)(2) applies in determining the share of a city under this section based on ad valorem taxes, except that the amount of ad valorem taxes levied by a city does not include ad valorem taxes levied on behalf of a taxing district and collected by the city."

SECTION 14.13.(g) This section is effective when it becomes law. Subsections (a) through (d) of this section expire July 1, 2018.

SECTION 14.14.(a) G.S. 105-277.3(d1) reads as rewritten:

"(d1) ~~Exception for Easements on Qualified~~ Conservation ~~Lands Previously Appraised at Use Value.~~ Exception. – Property that is appraised at its present-use value under G.S. 105-277.4(b) shall continue to qualify for appraisal, assessment, and taxation as provided in G.S. 105-277.2 through G.S. 105-277.7 as long as (i) the property is subject to ~~an enforceable~~ a qualifying conservation easement ~~that would qualify for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12,~~ that meets the requirements of G.S. 113A-232, without regard to actual production or income requirements of this section; and (ii) the taxpayer received no more than seventy-five percent (75%) of the fair market value of the donated property interest in compensation. Notwithstanding G.S. 105-277.3(b) and (b1), subsequent transfer of the property does not extinguish its present-use value eligibility as long as the property remains subject to ~~an enforceable~~ a qualifying conservation ~~easement that qualifies for the conservation tax credit provided in G.S. 105-130.34 and G.S. 105-151.12.~~ easement. The exception provided in this subsection applies only to that part of the property that is subject to the easement."

SECTION 14.14.(b) G.S. 113-77.9(d) reads as rewritten:

"(d) Acquisition. – The Department of Administration may, pursuant to G.S. 143-341, acquire by purchase, gift, or devise all lands selected by the Trustees for acquisition pursuant to this Article. Title to any land acquired pursuant to this Article ~~shall be~~ is vested in the State. A State agency with management responsibility for land acquired pursuant to this Article may enter into a management agreement or lease with a county, city, town, or private nonprofit organization ~~qualified under G.S. 105-151.12 and G.S. 105-130.34 and~~ certified under section 501(c)(3) of the Internal Revenue Code to aid in managing the land. A management agreement or lease shall be executed by the Department of Administration pursuant to G.S. 143-341."

SECTION 14.14.(c) G.S. 113A-231 reads as rewritten:

"**§ 113A-231. Program to accomplish conservation purposes.**

The Department of Environment and Natural Resources shall develop a nonregulatory program ~~that uses conservation tax credits as a prominent tool~~ to accomplish conservation purposes, including the maintenance of ecological systems. As a part of this program, the Department shall exercise its powers to protect real property and interests in real ~~property: property~~ donated for ~~tax credit under G.S. 105-130.34 or G.S. 105-151.12; conserved with the use of other financial incentives; or, conserved through nonregulatory programs.~~ conservation or conserved by other means. The Department shall call upon the Attorney General for legal assistance in developing and implementing the program."

SECTION 14.14.(d) G.S. 113A-232 reads as rewritten:

"**§ 113A-232. Conservation Grant Fund.**

(a) Fund Created. – The Conservation Grant Fund is created within the Department of Environment and Natural Resources. The Fund shall be administered by the Department. The purpose of the Fund is to stimulate the use of conservation ~~easements and conservation tax credits,~~ easements, to improve the capacity of private nonprofit land trust organizations to successfully accomplish conservation projects, to better equip real estate related professionals to pursue opportunities for conservation, to increase landowner participation in land and water conservation, and to provide an opportunity to leverage private and other public monies for conservation easements.

(b) Fund Sources. – The Conservation Grant Fund shall consist of any monies appropriated to it by the General Assembly and any monies received from public or private sources. Unexpended monies in the Fund that were appropriated from the General Fund by the General Assembly shall revert at the end of the fiscal year unless the General Assembly otherwise provides. Unexpended monies in the Fund from other sources shall not revert and shall remain available for expenditure in accordance with this Article.

(c) Property Eligibility. – In order for real property or an interest in real property to be the subject of a grant under this Article, the real property or interest in real property must meet all of the following conditions:

(1) ~~possess~~ Possess or have a high potential to possess ecological ~~value, must be~~ value.

(2) Be reasonably ~~restorable, and must qualify for tax credits under G.S. 105-130.34 or G.S. 105-151.12.~~restorable.

(3) Be useful for one or more of the following purposes:

a. Public beach access or use.

b. Public access to public waters or trails.

c. Fish and wildlife conservation.

d. Forestland or farmland conservation.

e. Watershed protection.

f. Conservation of natural areas as that term is defined in G.S. 113A-164.3(3).

g. Conservation of predominantly natural parkland.

(4) Be donated in perpetuity to and accepted by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions under G.S. 105-130.9. Land required to be dedicated

pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under a regulation or ordinance do not qualify.

(c1) Grant Eligibility. – State conservation land management agencies, local government conservation land management agencies, and private nonprofit land trust organizations are eligible to receive grants from the Conservation Grant Fund. Private nonprofit land trust organizations must be ~~qualified pursuant to G.S. 105-130.34 and G.S. 105-151.12 and must be~~ certified under section 501(c)(3) of the Internal Revenue ~~Code.~~Code to aid in managing the land.

(d) Use of Revenue. – Revenue in the Conservation Grant Fund may be used only for the following purposes:

(1) The administrative costs of the Department in administering the Fund.

(2) Conservation grants made in accordance with this Article.

(3) To establish an endowment account, the interest from which will be used for a purpose described in G.S. 113A-233(a)."

SECTION 14.14.(e) G.S. 113A-233 reads as rewritten:

"**§ 113A-233. Uses of a grant from the Conservation Grant Fund.**

(a) Allowable Uses. – A grant from the Conservation Grant Fund may be used only to pay for one or more of the following costs:

(1) Reimbursement for total or partial transaction costs for a donation of real property or an interest in real property from an individual or corporation satisfying either of the following:

a. Insufficient financial ability to pay all costs or insufficient taxable income to allow these costs to be included in the donated value.

b. Insufficient tax burdens to allow these costs to be offset by ~~the value of tax credits under G.S. 105-130.34 or G.S. 105-151.12 or by~~ charitable deductions.

(2) Management support, including initial baseline inventory and planning.

(3) Monitoring compliance with conservation easements, the related use of riparian buffers, natural areas, and greenways, and the presence of ecological integrity.

(4) Education on conservation, including information materials intended for landowners and education for staff and volunteers.

(5) Stewardship of land.

(6) Transaction costs for recipients, including legal expenses, closing and title costs, and unusual direct costs, such as overnight travel.

(7) Administrative costs for short-term growth or for building capacity.

(b) Prohibition. – The Fund shall not be used to pay the purchase price of real property or an interest in real property."

SECTION 14.14.(f) G.S. 113A-256(g) is repealed.

SECTION 14.15. Section 21.1(m) of S.L. 2013-360 reads as rewritten:

"**SECTION 21.1.(m)** ~~Subsection (c) of this section is effective for taxable years beginning on or after January 1, 2013. The remainder of this~~ This section becomes effective July 1, 2013."

SECTION 14.16.(a) G.S. 105-228.90(b)(1b) reads as rewritten:

"(1b) Code. – The Internal Revenue Code as enacted as of ~~January 2, 2013,~~ December 31, 2013, including any provisions enacted as of that date that become effective either before or after that date."

SECTION 14.16.(b) This section is effective when it becomes law. Notwithstanding subsection (a) of this section, any amendments to the Internal Revenue Code enacted after January 2, 2013, that increase North Carolina taxable income for the 2013 taxable year become effective for taxable years beginning on or after January 1, 2014.

SECTION 14.17. G.S. 105-242(g) reads as rewritten:

"(g) Erroneous Lien. – A taxpayer may appeal to the Secretary after a certificate is filed under subsection (c) of this section if the taxpayer alleges an error in the filing of the lien. The Secretary shall make a determination of such an appeal as quickly as possible. If the Secretary finds that the filing of the certificate was erroneous, the Secretary shall ~~issue a certificate of release of the lien as quickly as possible.~~withdraw the lien as quickly as possible by issuing a certificate of withdrawal."

SECTION 14.18. G.S. 105-242.2 reads as rewritten:

"**§ 105-242.2. Personal liability when certain taxes not paid.**

(a) Definitions. – The following definitions apply in this section:

(1) Business entity. – A corporation, a limited liability company, or a partnership.

(2) Responsible person. – Any of the following:

a. The president, treasurer, or chief financial officer of a corporation.

b. A manager of a limited liability company or a partnership.

c. An officer of a corporation, a member or company official of a limited liability company, or a partner in a partnership who has a duty to deduct, account for, or pay taxes listed in subsection (b) of this section.

d. A partner who is liable for the debts and obligations of a partnership under G.S. 59-45 or G.S. 59-403.

(b) Responsible Person. – Each responsible person in a business entity is personally and individually liable for the principal amount of taxes that are owed by the business entity and are listed in this subsection. If a business entity does not pay the amount it owes after the amount becomes collectible under G.S. 105-241.22, the Secretary may enforce the responsible person's liability for the amount by sending the responsible person a notice of proposed assessment in accordance with G.S. 105-241.9. This subsection applies to the following:

(1) All sales and use taxes collected by the business entity upon its taxable transactions.

(2) All sales and use taxes due upon taxable transactions of the business entity but upon which it failed to collect the tax, but only if the person knew, or in the exercise of reasonable care should have known, that the tax was not being collected.

(3) All taxes due from the business entity pursuant to the provisions of Articles 36C and 36D of Subchapter V of this Chapter and all taxes

payable under those Articles by it to a supplier for remittance to this State or another state.

(4) All income taxes required to be withheld ~~from the wages of employees of~~ by the business entity.

...."

SECTION 14.19. G.S. 105-296(m) reads as rewritten:

"(m) The assessor shall annually review the transportation corridor official maps and amendments to them filed with the register of deeds pursuant to Article 2E of Chapter 136 of the General Statutes. The assessor must indicate on all tax maps maintained by the county or city that portion of the properties embraced within a transportation corridor and must note any variance granted for the property for such period as the designation remains in effect. The assessor must tax the property within a transportation corridor as required under ~~G.S. 105-277.9.~~G.S. 105-277.9 and G.S. 105-277.9A."

SECTION 14.20.(a) G.S. 105-309(d) reads as rewritten:

"(d) Personal property shall be listed to indicate the township and municipality, if any, in which it is taxable and shall be itemized by the taxpayer in such detail as may be prescribed by an abstract form approved by the Department of Revenue. ~~Personal property shall also be listed to indicate which property, if any, is subject to a tax credit under G.S. 105-151.21.~~

(1) If the assessor considers it necessary to obtain a complete listing of personal property, the assessor may require a taxpayer to submit additional information, inventories, or itemized lists of personal property.

(2) At the request of the assessor, the taxpayer shall furnish any information the taxpayer has with respect to the true value of the personal property the taxpayer is required to list."

SECTION 14.20.(b) G.S. 105-320(a)(16) is repealed.

SECTION 14.21. G.S. 105-315(a)(2) reads as rewritten:

"**§ 105-315. ~~Reports~~ Report by persons having custody of tangible personal property of others.**

(a) As of January 1, every person having custody of taxable tangible personal ~~property~~ property that has been entrusted to ~~him~~ the person by another for storage, sale, renting, or any other business purpose shall furnish to the ~~appropriate~~ assessor of the county in which the property is situated ~~the reports required by subdivision (a)(2), below:~~a report with the information listed in this subsection. This requirement does not apply to a person having custody of inventories exempt under G.S. 105-275(32a), 105-275(33), or 105-275(34). As used in this section, the term "person having custody of taxable tangible personal property" includes warehouses, cooperative growers' and marketing associations, consignees, factors, commission merchants, and brokers. The report must include all of the following:

(1) Repealed by Session Laws 1987, c. 813, s. 14.

(2) ~~For all tangible personal property, except inventories exempt under G.S. 105-275(33) and (34), there shall be furnished to the assessor of the county in which the property is situated a statement showing the~~ The name of the owner of the ~~property, a description of the property,~~

~~the quantity of the property, and the amount of money, if any, advanced against the property by the person having custody of it.~~property.

(3) A description of the property.~~For purposes of illustration, but not by way of limitation, the term "person having custody of taxable tangible personal property" as used in this subsection (a) shall include warehouses, cooperative growers' and marketing associations, consignees, factors, commission merchants, and brokers.~~

(4) The quantity of the property.

(5) The amount of money, if any, advanced against the property by the person having custody of the property.

(b) ~~Any~~ A person who fails to make the ~~reports~~ report required by ~~subsection (a), above,~~ this section, by January 15 in any year ~~shall be~~ is liable to the counties in which the property is taxable for a penalty to be measured by any portion of the tax on the property that has not been paid at the time the action to collect this penalty is brought plus two hundred fifty dollars ($250.00). This penalty may be recovered in a civil action in the appropriate division of the General Court of Justice of the county in which the property is taxable. Upon recovery of this penalty, the tax on the property ~~shall be~~ is deemed ~~to be~~ paid."

SECTION 14.22. G.S. 105-537(d) is repealed.

SECTION 14.23. Section 60(l) of S.L. 2013-414 reads as rewritten:

"**SECTION 60.(l)** Section 4 of ~~Chapter 605~~ Chapter 555 of the 1991 ~~Session Laws~~ Session Laws, as amended by Section 1 of S.L. 1997-447, is repealed."

SECTION 14.24. Article 3 of Chapter 20 of the General Statutes is amended by adding a new section to read:

"**§ 20-79.1B. Additional limited registration plates.**

When the Division or License Plate Agency issues a plate other than a renewal of a plate for a vehicle whose registration has been expired for at least one year, the customer may, if he or she disputes the amount of tax owed for the current year under G.S. 105-330.5, opt for a limited registration plate until the tax issue is resolved with the county. Within 12 months of the date the limited plate is issued under this section, the customer must pay all taxes due before the customer is issued a new registration certificate and a year sticker to be applied to the plate showing it to expire one year after the issuance of the limited registration plate."

SECTION 14.25. G.S. 105-113.107(a) reads as rewritten:

"(a) Controlled Substances. – An excise tax is levied on controlled substances possessed, either actually or constructively, by dealers at the following rates:

(1) At the rate of forty cents (40¢) for each gram, or fraction thereof, of harvested marijuana stems and stalks that have been separated from and are not mixed with any other parts of the marijuana plant.

(1a) At the rate of three dollars and fifty cents ($3.50) for each gram, or fraction thereof, of marijuana, other than separated stems and stalks taxed under subdivision (1) of this [sub]section, or synthetic cannabinoids.

(1b) At the rate of fifty dollars ($50.00) for each gram, or fraction thereof, of cocaine.

(1c) At the rate of fifty dollars ($50.00) for each gram, or fraction thereof, of any low-street-value drug that is sold by weight.

(2) At the rate of two hundred dollars ($200.00) for each gram, or fraction thereof, of any other controlled substance that is sold by weight.

(2a) At the rate of fifty dollars ($50.00) for each 10 dosage units, or fraction thereof, of any low-street-value drug that is not sold by weight.

(3) At the rate of two hundred dollars ($200.00) for each 10 dosage units, or fraction thereof, of any other controlled substance that is not sold by weight."

PART XV. TAX VAPOR PRODUCTS AND PROHIBIT USE OF VAPOR PRODUCTS IN JAILS

SECTION 15.1.(a) G.S. 105-113.3 reads as rewritten:

"**§ 105-113.3. Scope of tax; administration.**

(a) Scope. – The taxes imposed by this Article shall be collected only once on the same tobacco ~~product.~~product or vapor product. Except as permitted by Article 2 of this Chapter, a city or county may not levy a privilege license tax on the sale of tobacco ~~products.~~products or vapor products.

(b) Administration. – Article 9 of this Chapter applies to this Article."

SECTION 15.1.(b) G.S. 105-113.4 reads as rewritten:

"**§ 105-113.4. Definitions.**

The following definitions apply in this Article:

...

(1k) Consumable product. – Any nicotine liquid solution or other material containing nicotine that is depleted as a vapor product is used.

...

(4a) Integrated wholesale dealer. – A wholesale dealer who is an affiliate of a manufacturer of vapor products or tobacco products, other than cigarettes, and is not a retail dealer.

(5) Licensed distributor. – A distributor licensed under Part 2 of this Article.

(6) Manufacturer. – A person who produces tobacco products or vapor products or a person who contracts with another person to produce tobacco products or vapor products and is the exclusive purchaser of the products under the contract.

...

(9) Retail dealer. – A person who sells a tobacco product or vapor product to the ultimate consumer of the product.

...

(11a) Tobacco product. – A cigarette, a cigar, or any other product that contains tobacco and is intended for inhalation or oral use. The term does not include a vapor product.

(12) Repealed by Session Laws 1993, c. 442, s. 1, effective January 1, 1994.

(13) Use. – The exercise of any right or power over cigarettes, incident to the ownership or possession thereof, other than the making of a sale thereof in the course of engaging in a business of selling cigarettes. The term includes the keeping or retention of cigarettes for use.

(13a) Vapor product. – Any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to produce vapor from nicotine in a solution. The term includes any vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term does not include any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act.

(14) Wholesale dealer. – Either of the following:

a. A person who acquires vapor products or tobacco products other than cigarettes for sale to another wholesale dealer or to a retail dealer.

b. A manufacturer of vapor products or tobacco products other than cigarettes."

SECTION 15.1.(c) G.S. 105-113.4D reads as rewritten:

"**§ 105-113.4D. Tax with respect to inventory on effective date of tax increase.**

Every person subject to the taxes levied in this Article who, on the effective date of a tax increase under this Article, has on hand any tobacco products or vapor products must file a complete inventory of the tobacco products within 20 days after the effective date of the increase, and must pay an additional tax to the Secretary when filing the inventory. The amount of tax due is the amount due based on the difference between the former tax rate and the increased tax rate."

SECTION 15.1.(d) The title of Part 3 of Subchapter I of Chapter 105 of the General Statutes reads as rewritten:

"Part 3. Tax on Other Tobacco ~~Products.~~Products and Vapor Products."

SECTION 15.1.(e) G.S. 105-113.35 reads as rewritten:

"**§ 105-113.35. Tax on tobacco products other than ~~cigarettes.~~cigarettes and vapor products.**

(a) ~~Tax.~~ Tax on Tobacco Products. – An excise tax is levied on tobacco products other than cigarettes at the rate of twelve and eight-tenths percent (12.8%) of the cost price of the products. ~~This tax does not apply to the following:~~

~~(1) A tobacco product sold outside the State.~~

~~(2) A tobacco product sold to the federal government.~~

~~(3) A sample tobacco product distributed without charge.~~

(a1) Tax on Vapor Products. – An excise tax is levied on vapor products at the rate of five cents (5¢) per fluid milliliter of consumable product. All invoices for vapor products issued by manufacturers must state the amount of consumable product in milliliters.

(a2) Limitation. – The taxes imposed under this section do not apply to the following:

(1) A tobacco product or vapor product sold outside the State.

(2) A tobacco product or vapor product sold to the federal government.

(3) A sample tobacco product or vapor product distributed without charge.

(b) Primary Liability. – The wholesale dealer or retail dealer who first acquires or otherwise handles tobacco products or vapor products subject to the tax imposed by this section is liable for the tax imposed by this section. A wholesale dealer or retail dealer who brings into this State a tobacco product or vapor product made outside the State is the first person to handle the tobacco product or vapor product in this State. A wholesale dealer or retail dealer who is the original consignee of a tobacco product or vapor product that is made outside the State and is shipped into the State is the first person to handle the tobacco product or vapor product in this State.

(c) Secondary Liability. – A retail dealer who acquires non-tax-paid tobacco products or vapor products subject to the tax imposed by this section from a wholesale dealer is liable for any tax due on the tobacco ~~products.~~products or vapor products. A retail dealer who is liable for tax under this subsection may not deduct a discount from the amount of tax due when reporting the tax.

(d) Manufacturer's Option. – A manufacturer who is not a retail dealer and who ships vapor products or tobacco products other than cigarettes to either a wholesale dealer or retail dealer licensed under this Part may apply to the Secretary to be relieved of paying the tax imposed by this section on the tobacco ~~products.~~products or vapor products. Once granted permission, a manufacturer may choose not to pay the tax until otherwise notified by the Secretary. To be relieved of payment of the tax imposed by this section, a manufacturer must comply with the requirements set by the Secretary.

Permission granted under this subsection to a manufacturer to be relieved of paying the tax imposed by this section applies to an integrated wholesale dealer with whom the manufacturer is an affiliate. A manufacturer must notify the Secretary of any integrated wholesale dealer with whom it is an affiliate when the manufacturer applies to the Secretary for permission to be relieved of paying the tax and when an integrated wholesale dealer becomes an affiliate of the manufacturer after the Secretary has given the manufacturer permission to be relieved of paying the tax.

If a person is both a manufacturer of cigarettes and a wholesale dealer of vapor products or tobacco products other than cigarettes and the person is granted permission under G.S. 105-113.10 to be relieved of paying the cigarette excise tax, the permission applies to the tax imposed by this section on vapor products or tobacco products other than cigarettes. A cigarette manufacturer who becomes a wholesale dealer after receiving permission to be relieved of the cigarette excise tax must notify the Secretary of the permission received under G.S. 105-113.10 when applying for a license as a wholesale dealer.

(d1) Limitation. – Except as otherwise provided in this Article, integrated wholesale dealers may not sell, borrow, loan, or exchange non-tax-paid vapor products or non-tax-paid tobacco products other than cigarettes to, from, or with other integrated wholesale dealers.

(e) Repealed by Session Laws 2009-451, s. 27A.5(c), effective September 1, 2009."

SECTION 15.1.(f) G.S. 105-113.36 reads as rewritten:

"**§ 105-113.36. Wholesale dealer and retail dealer must obtain license.**

A wholesale dealer shall obtain for each place of business a continuing tobacco or vapor products license and shall pay a tax of twenty-five dollars ($25.00) for the license. A retail dealer shall obtain for each place of business a continuing tobacco or vapor products license and shall pay a tax of ten dollars ($10.00) for the license. A "place of business" is a place where a wholesale dealer or where a retail dealer makes tobacco or vapor products other than cigarettes or a wholesale dealer or a retail dealer receives or stores non-tax-paid vapor products or non-tax-paid tobacco products other than cigarettes."

SECTION 15.1.(g) G.S. 105-113.37 reads as rewritten:

"**§ 105-113.37. Payment of tax.**

(a) Monthly Report. – Except for tax on a designated sale under subsection (b), the taxes levied by this Article are payable when a report is required to be filed. A report is due on a monthly basis. A monthly report covers sales and other activities occurring in a calendar month and is due within 20 days after the end of the month covered by the report. A report shall be filed on a form provided by the Secretary and shall contain the information required by the Secretary.

(b) Designation of Exempt Sale. – A wholesale dealer who sells a tobacco product or vapor product to a person who has notified the wholesale dealer in writing that the person intends to resell the item in a transaction that is exempt from tax under ~~G.S. 105-113.35(a)(1) or (2)~~G.S. 105-113.35(a3)(1) or (2) may, when filing a monthly report under subsection (a), designate the quantity of tobacco products or vapor products sold to the person for resale. A wholesale dealer shall report a designated sale on a form provided by the Secretary.

A wholesale dealer is not required to pay tax on a designated sale when filing a monthly report. The wholesale dealer shall pay the tax due on all other sales in accordance with this section. A wholesale dealer or a customer of a wholesale dealer may not delay payment of the tax due on a tobacco product or vapor product by failing to pay tax on a sale that is not a designated sale or by overstating the quantity of tobacco products or vapor products that will be resold in a transaction exempt under ~~G.S. 105-113.35(a)(1) or (2).~~G.S. 105-113.35(a3)(1) or (2).

A person who does not sell a tobacco product or vapor product in a transaction exempt under ~~G.S. 105-113.35(a)(1) or (2)~~ G.S. 105-113.35(a3)(1) or (2) after a wholesale dealer has failed to pay the tax due on the sale of the item to the person in reliance on the person's written notification of intent is liable for the tax and any penalties and interest due on the designated sale. If the Secretary determines that a tobacco product or vapor product reported as a designated sale is not sold as reported, the Secretary shall assess the person who notified the wholesale dealer of an intention to resell the item in an exempt transaction for the tax due on the sale and any applicable penalties and interest. A wholesale dealer who does not pay tax on a tobacco product or vapor product in reliance on a person's written notification of intent to resell the item in an exempt transaction is not liable for any tax assessed on the item.

(c) Repealed by Session Laws 1991 (Regular Session, 1992), c. 955, s. 12.

(d) Shipping Report. – Any person who transports other tobacco products or vapor products upon the public highways, roads, or streets of this State must, upon notice from the Secretary, file a report in a form prescribed by and containing the information required by the Secretary."

SECTION 15.1.(h) G.S. 105-113.39(a) reads as rewritten:

"**§ 105-113.39. Discount; refund.**

(a) Discount. – A wholesale dealer or a retail dealer who is primarily liable under G.S. 105-113.35(b) for the excise taxes imposed by this ~~Part.~~Part on tobacco products, who files a timely report under G.S. 105-113.37, and who sends a timely payment may deduct from the amount due with the report a discount of two percent (2%). This discount covers expenses incurred in preparing the records and reports required by this Part and the expense of furnishing a bond."

SECTION 15.1.(i) G.S. 105-113.40 reads as rewritten:

"**§ 105-113.40. Records of sales, inventories, and purchases to be kept.**

Every wholesale dealer and retail dealer shall keep accurate records of the dealer's purchases, inventories, and sales of tobacco ~~products.~~products or vapor products. These records shall be open at all times for inspection by the Secretary or an authorized representative of the Secretary."

SECTION 15.1.(j) This section becomes effective February 1, 2015.

SECTION 15.2.(a) G.S. 148-23.1 reads as rewritten:

"**§ 148-23.1. Tobacco and vapor products prohibited on State correctional facilities premises.**

(a) The General Assembly finds that in order to protect the health, welfare, and comfort of inmates in the custody of the Division of Adult Correction of the Department of Public Safety and to reduce the costs of inmate health care, it is necessary to prohibit inmates from using tobacco and vapor products on the premises of State correctional facilities and to ensure that employees and visitors do not use tobacco and vapor products on the premises of those facilities.

(b) No person may use tobacco or vapor products on the premises of a State correctional facility, except for authorized religious purposes. Notwithstanding any other provision of law, inmates in the custody of the Division of Adult Correction of the Department of Public Safety and persons facilitating religious observances may use and possess tobacco or vapor products for religious purposes consistent with the policies of the Division.

(b1) Except as provided in subsection (b) of this section, no person may possess tobacco or vapor products on the premises of a State correctional facility. Notwithstanding the provisions of this subsection, an employee or visitor may possess tobacco or vapor products within the confines of a motor vehicle located in a designated parking area of a correctional facility's premises if the tobacco or vapor product remains in the vehicle and the vehicle is locked when the employee or visitor has exited the vehicle.

(c) The Division of Adult Correction of the Department of Public Safety may adopt rules to implement the provisions of this section. Inmates in violation of this section are subject to disciplinary measures to be determined by the Division, including the potential loss of sentence credits earned prior to that violation. Employees in violation of this section are subject to disciplinary action by the Division. Visitors in violation of this section are subject to removal from the facility and loss of visitation privileges.

(d) As used in this section, the following terms mean:

(1) State correctional facility. – All buildings and grounds of a State correctional institution operated by the Division of Adult Correction of the Department of Public Safety.

(2) Tobacco products. – Cigars, cigarettes, snuff, loose tobacco, or similar goods made with any part of the tobacco plant that are prepared or used for smoking, chewing, dipping, or other personal use.

(3) Vapor products. – Noncombustible products that employ a mechanical heating element, battery, or electronic circuit regardless of shape or size and that can be used to heat a liquid nicotine solution contained in a vapor cartridge. The term includes electronic cigarettes, electronic cigars, electronic cigarillos, and electronic pipes. The term does not include any product regulated by the United States Food and Drug Administration under Chapter V of the federal Food, Drug, and Cosmetic Act."

SECTION 15.2.(b) G.S. 14-258.1 reads as rewritten:

"**§ 14-258.1. Furnishing poison, controlled substances, deadly weapons, cartridges, ammunition or alcoholic beverages to inmates of charitable, mental or penal institutions or local confinement facilities; furnishing tobacco or vapor ~~products or~~ products; or furnishing mobile phones to inmates.**

...

(c) Any person who knowingly gives or sells any tobacco or vapor product, as defined in G.S. 148-23.1, to an inmate in the custody of the Division of Adult Correction of the Department of Public Safety and on the premises of a correctional facility or to an inmate in the custody of a local confinement facility, or any person who knowingly gives or sells any tobacco or vapor product to a person who is not an inmate for delivery to an inmate in the custody of the Division of Adult Correction of the Department of Public Safety and on the premises of a correctional facility or to an inmate in the custody of a local confinement facility, other than for authorized religious purposes, is guilty of a Class 1 misdemeanor.

...

(e) Any inmate of a local confinement facility who possesses any tobacco or vapor product, as defined in G.S. 148-23.1, other than for authorized religious purposes, or who possesses a mobile telephone or other wireless communications device or a component of one of those devices, is guilty of a Class 1 misdemeanor."

SECTION 15.2.(c) Subsection (a) of this section becomes effective July 1, 2014. Subsection (b) of this section becomes effective December 1, 2014, and applies to offenses committed on or after that date. The remainder of this section is effective when it becomes law.

PART XVI. CHANGE CORPORATE APPORTIONMENT FORMULA TO FOUR TIMES THE SALES FACTOR

SECTION 16.1.(a) G.S. 105-130.4(i) reads as rewritten:

"(i) All apportionable income of corporations other than public utilities, excluded corporations, and qualified capital intensive corporations shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus ~~twice~~ four times the sales factor, and the denominator

of which is ~~four.~~six. If the sales factor does not exist, the denominator of the fraction is the number of existing factors and if the sales factor exists but the payroll factor or the property factor does not exist, the denominator of the fraction is the number of existing factors plus ~~one.~~three."

SECTION 16.1.(b) This section becomes effective for taxable years beginning on or after January 1, 2015.

PART XVII. EFFECTIVE DATE

SECTION 17.1. Except as otherwise provided, this act is effective when it becomes law.

House Bill 1050:
Omnibus Tax Law Changes.

2013-2014 General Assembly

Committee:	House Finance	**Date:**	May 14, 2014
Introduced by:	Representatives Howard, Bill Brawley, Lewis, and Setzer	**Prepared by:**	Cindy Avrette Committee Counsel
Analysis of:	House Bill 1050		

SUMMARY: House Bill 1050 makes various tax law changes recommended by the Revenue Laws Study Committee. The Revenue Laws Study Committee met each month during the interim and began reviewing bill drafts at its November meeting. The Committee posted the drafts on its website; received comments from taxpayers, the Department of Revenue, and other interested parties; and held committee discussions. The Committee's meeting materials may be found on its website. Revenue Laws Committee Documents

PART I. DEDUCTION FOR STATE NET LOSS

SUMMARY: Part I of the Omnibus Tax Law Changes bill would replace the corporate net economic loss deduction with a State net loss deduction for taxable years beginning on or after January 1, 2015.

CURRENT LAW: Both federal and State tax law provide relief to a corporation that incurs more expenses than revenues during the taxable period. For federal tax purposes, a corporation is allowed a net operating loss deduction equal to the amount by which tax deductible expenses are more than taxable revenues. The federal deduction may be carried back two years preceding the loss year, thus providing immediate tax relief in the form of a tax credit; any unused portion of the deduction may be carried forward for 20 years. For State tax purposes, a corporation is allowed a net economic loss deduction[1] equal to the amount by which allowable deductions for the year other than prior year losses exceed income from all sources in the year, including nontaxable income.[2] The State deduction may be carried forward 15 years; any loss carryforward must first be offset by nontaxable income, including allowable deductions.

BILL ANALYSIS: This Part does three things to simplify the calculation and ease the administration of the corporate loss deduction, effective for taxable years beginning on or after January 1, 2015:

- It replaces the net economic loss calculation with a State net loss calculation that is more comparable to the federal net operating loss calculation.

[1] NC is the only state with a net economic loss deduction that differs significantly from the federal net operating loss deduction. Other states that have a corporate income tax loss deduction use a calculation that is comparable to the federal net operating loss deduction.

[2] Nontaxable income includes income that has been deducted in computing State net income, nonapportionable income that has been allocated directly to another state under G.S. 105-130.4, and any other income that is not taxable under State law. Prior to August 17, 2013, the Department of Revenue interpreted G.S. 105-130.8 to require items deductible under G.S. 105-130.5, such as U.S. government interest and dividends, to be considered in the computation of the loss in the year of creation as nontaxable income. The Department revised its interpretation to recognize that an allowable deduction, although not taxable, may not reduce a loss in the year the loss is created. However, pursuant to G.S. 105-130.8(a)(3), the Department continued to require that a loss carried forward to a subsequent year must first be offset by any income not taxable, including allowable deductions under G.S. 105-130.5.

- It removes the requirement that a net economic loss carried forward to taxable years beginning on or after January 1, 2015, be first offset by nontaxable income.
- It instructs the Secretary of Revenue to apply the standards under sections 381 and 382 of the Code when determining to what extent a loss survives a merger or an acquisition.

The Part would replace the State's net economic loss deduction with a State net loss deduction. The State net loss would be the amount by which allowable deductions for the year, other than prior year losses, exceed gross income under the Code for the year adjusted as provided in G.S. 105-130.5. Adjustments under G.S. 105-130.5 include items such as the adjustments taxpayers must make when the State decouples from federal accelerated depreciation and expensing. If the taxpayer is a multi-state corporation with business within and without North Carolina, then the loss must be allocated and apportioned in the year of the loss in accordance with G.S. 105-130.4.

The repeal of the net economic loss deduction removes the applicability of North Carolina case law that governs the extent to which a net economic loss survives in a merger or an acquisition. The draft instructs the Secretary of Revenue to apply the federal regulations adopted under sections 381 and 382 of the Code in determining the extent to which a loss survives in a merger or acquisition. Although the provisions of the Code would be applied, the loss limitations may differ at the State level based upon the single entity reporting requirement in North Carolina and subject to the allocation and apportionment provisions of G.S. 105-130.4 in the year of the loss.

The Part changes the calculation of a net economic loss carry-forward. Under current law, the carry-forward must be reduced by nontaxable income. What constitutes nontaxable income has been a source of questions, disagreements, and litigation. Under the change made by this Part, the amount of the net economic loss, as determined on December 31, 2014, becomes a static amount. Any unused portion of a net economic loss carried forward in taxable years beginning on or after January 1, 2015, would be administered in accordance with the State net loss statute:

- Any unused portion of a net economic loss would not have to first be offset by nontaxable income.
- The standards under sections 381 and 382 of the Code would be applied in determining the extent to which a net economic loss survives a merger or acquisition that occurs on or after January 1, 2015.

EFFECTIVE DATE: This Part would become effective for taxable years beginning on or after January 1, 2015.

PART II. OTHER INCOME TAX CHANGES

SUMMARY: Part II of the Omnibus Tax Law Changes bill makes technical and clarifying changes to various income tax laws.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE: This Part makes the following technical and clarifying changes to the income tax laws.

Section 179 expense deduction

Section 2.1 makes two changes to the section 179 expense deduction for State income tax purposes to reflect the intent of legislative action taken in 2013. These changes need to be enacted as soon as possible since the changes impact 2013 tax returns. Many taxpayers have filed extensions, waiting for these provisions to be enacted.

First, it corrects the dollar amount of the section 179 expense investment limit. In the American Taxpayer Relief Act of 2013, Congress extended the $500,000/$2,000,000 accelerated section 179

expense deduction allowances for 2013 and 2014. The intent of S.L. 2013-10 was to decouple from this federal provision and return to the limits that would have been applicable under the Code as written in December 2010. The act erroneously referred to the Code as defined in May 2010. The Code was amended three times in 2010, and the changes included three different section 179 expense limits. S.L. 2013-414 rewrote the statutes that decouple from the federal accelerated depreciation expensing to make them clearer to understand. As part of the rewrite, the subsection decoupling from the section 179 expense limits sets forth the limits as opposed to referring to the Code on a certain date. In setting forth the limits, the dollar amount of the investment limit should have been $200,000 rather than $125,000.

Second, it makes changes to ensure that qualifying taxpayers may receive the benefit of the add-back deductions. Beginning in 2002, Congress has allowed taxpayers to depreciate certain assets more quickly than would otherwise be allowed – 100% bonus depreciation and section 179 expense deductions. Many states, including North Carolina, have decoupled from those provisions primarily because the fiscal impact of conforming to the greater depreciation rules would have been too costly. Instead of granting the larger depreciation in the initial years, North Carolina required taxpayers to add-back 85% of the deduction in the first year and to deduct 20% of this amount over the next five years. Taxpayers who changed their form of business entity or who merged with subsidiaries within the five-year period of deductions were not allowed to take the remaining deductions because the taxable entity that made the add-back and received the initial deductions either no longer existed or no longer owned the depreciable asset. The result in some cases was that the asset did not receive the full benefit of the deduction. S.L. 2013-414 changed the law to allow the transferee of an asset, where the tax basis of the transferred asset carried over from the transferor to the transferee for federal income tax purposes, to add any remaining deductions to the basis of the transferred asset and to depreciate the adjusted basis over the remaining life of the asset. For transactions that occurred prior to January 1, 2013, the law provided an election whereby the transferee could make the basis adjustment for any deductions foregone by the transferor. However, this allowance does not help a taxpayer who had disposed of the asset or whose asset had no remaining useful life. This section remedies this situation by allowing a taxpayer to deduct the remaining bonus depreciation on the 2013 tax return.

Personal income tax deductions

Section 2.2 does the following two things.

First, it clarifies that a person who is not eligible for a federal standard deduction is not eligible for a State standard deduction. North Carolina follows the federal law concerning an individual's eligibility for a standard deduction. The tax reform legislation inadvertently failed to follow this practice. Under federal law, the following individuals are not eligible for a standard deduction:

- A married individual filing a separate return where either spouse itemizes deductions.
- A nonresident alien individual. A resident alien is a person who meets either the "green card test" or the "substantial presence test".
- An individual making a return for a period of less than 12 months on account of a change in the person's annual accounting period.
- An estate or trust, common trust fund, or partnership.

Second, it clarifies the application of the $20,000 deduction for mortgage interest expenses paid and property taxes paid on real estate. S.L. 2013-316 limited the federally allowed itemized deductions for mortgage interest expenses paid and property taxes paid on real estate at $20,000. The intent of the legislation was for the $20,000 cap to apply to the cumulative deduction for a married couple, regardless of how the couple files a return. At the request of the Department of Revenue, this section clarifies this intent.

This section would become effective for taxable years beginning on or after January 1, 2014.

Income tax rate applicable to estates

Section 2.3 updates the statutory references in G.S. 105 160.2 which imposes income tax on estates and trusts. Estates and trusts generally receive the same modifications to taxable income and tax rates as single individuals. House Bill 998, S.L. 2013 316, moved the statutes allowing modifications to North Carolina taxable income and setting the tax rate.

This section would become effective for taxable years beginning on or after January 1, 2014.

PART III. AGRICULTURAL EXEMPTION CERTIFICATE

SUMMARY: Part III of the Omnibus Tax Law Changes bill gives guidance to the farming community and the Department of Revenue as to the administration of the income threshold a person must meet to qualify for a sales tax agricultural exemption certificate. It also allows a three-year income averaging to address issues of income volatility in farming operations.

CURRENT LAW: In S.L. 2013-316, the General Assembly imposed an income threshold a person must meet to qualify for a sales tax agricultural exemption certificate. Effective July 1, 2014, a person does not qualify for an agricultural exemption certificate unless the person has an annual gross income for the preceding taxable year[3] of at least $10,000 from farming operations. For federal income tax purposes, gross income from farming includes sales of agricultural products, cooperative distributions, agricultural program payments, and crop insurance and federal disaster payments. It appears five other states impose an income requirement to qualify for a sales tax agricultural exemption: Connecticut, Georgia, Rhode Island, Tennessee, and Washington. The income limit in these states varies from $1,000 in Tennessee to $10,000 in Washington. Four of those states have conditional exemption certificates for new farmers.

An agricultural exemption certificate allows a person to purchase the following items for farming operations without paying sales tax on those items: fuel; electricity; commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, baler twine, and seeds; farm machinery; attachments and repair parts for farm machinery; containers used in farm production, packaging, and transporting; grain, feed, or soybean storage facilities; substances for use on animals and plants, such as vaccines, insecticides, defoliants, and plant growth regulators; baby chicks; facilities used for housing, raising, or feeding animals; and bulk tobacco barns and parts and accessories for those barns.

A person who qualifies for an exemption certificate must apply to the Department. A certificate is valid until it is cancelled or revoked. An exemption certificate authorizes the retailer to sell an item to the holder and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A retailer does not need to obtain a certificate for each purchase if the retailer has a blanket certificate from a purchaser with which the retailer has a recurring business relationship. A person who purchases an item with a certificate is liable for any tax due on the sale if the Department determines the person is not eligible for the certificate. The statute does not place an affirmative duty on the holder of a certificate to notify the Department if the person no longer qualifies for it.

BILL ANALYSIS: Part III of the bill answers questions the farming community has posed concerning the implementation of the gross income requirements:

- Administration. – The bill clearly states that a person may not use an agricultural exemption certificate after July 1, 2014, unless the person meets the income requirements and that a person who no longer qualifies for the certificate is liable for any tax due. A qualifying

[3] The statute currently says "calendar year". The Department has requested that the term be changed to "taxable year". The bill draft makes this change.

farmer must apply to the Department for a new exemption certificate. A retailer may continue to rely upon a blanket certificate until October 1, 2014.

- Application for Certificate. – Neither the law enacted last year nor this bill changes the current administration of exemption certificates. However, the bill does impose an affirmative duty on a person who has an exemption certificate to notify the Department whenever the person no longer qualifies for it and to give notice to any seller that may rely on it. The affirmative duty applies to all holders of a certificate, not just farmers. This affirmative duty is similar to the one imposed on taxpayers who no longer qualify for preferential property tax treatment. The farming community is familiar with this requirement as part of the present use value property tax exemption program.
- Liability for Tax Due. – The bill affirmatively states that anyone who purchases an item under an exemption certificate is liable for the tax due on the purchase if the Department determines that the person is not eligible for the certificate or that the item purchased does not qualify for exemption under the certificate.
- Income Volatility. – The bill makes a substantive change to the income threshold at the request of the farming community to address volatility in farming income and to prevent a person from moving into and out of the exemption annually. To obtain a certificate, a person must have $10,000 of gross income from farming operations during the preceding taxable year or an average of $10,000 of gross income from farming operations for the three preceding taxable years. A farmer no longer qualifies for the exemption certificate when the farmer fails to meet the income threshold for three consecutive years. The Farm Bureau expressed concerns for certain types of farming operations that may not produce income on an annual basis, such as cattle breeders and timber operations.

EFFECTIVE DATE: This Part of the bill would become effective July 1, 2014, and applies to purchases made on or after that date.

BACKGROUND: There are currently 49,437 agricultural exemption certificates outstanding. Last year the Department issued 2,185 new certificates and it issued 2,253 certificates in 2012. Here are some statistics from the 2012 USDA Census of Agriculture:

	2012	**2007**
Total NC Farms	50,218	52,913
NC Farms < $10,000 in sales	31,492	34,276
NC Farms > $10,000 in sales	18,726	18,637
NC Farms < $10,000 in sales & government payments	30,960	33,741
NC Farms > $10,000 in sales & government payments	19,258	19,172

PART IV. PREPAID MEAL PLANS

SUMMARY: Part IV of the Omnibus Tax Law Changes bill addresses sales tax issues related to the repeal of the sales tax exemption for meals served to students in dining rooms of regularly operated educational institutions.

CURRENT LAW: S.L. 2013-316 repealed the exemption for meals served to students in dining rooms of regularly operated by educational institutions, effective January 1, 2014. In practice, meals are not always sold directly. Today, educational institutions sell a variety of meal plans that offer choices between a specific number of "meal swipes" and "food dollars". The meal swipes are part of a prepaid meal plan that entitles the student to a predetermined number of meals. The cost applies regardless of whether or not the student consumes the meals. The food dollars are part of a declining card balance, much like a debit card, that may be used in on-campus facilities for a variety of purchases as well as with participating privately-owned facilities. The meal swipes are problematic to tax on a transactional basis because the gross receipts paid for the meal swipes applies regardless of whether or not the meals are consumed. In practice, few institutions operate their dining halls; instead, they contract with third party vendors to prepare the meals and operate the dining halls.

BILL ANALYSIS: Part IV of the bill addresses questions and administrative issues taxpayers and the Department of Revenue have encountered with the taxation of food and prepared food sold to students in colleges and universities.

Subsection	Explanation
(a)	Defines a prepaid meal plan to be a plan offered by an institution of higher education that entitled a person to food or prepared food, that is billed or paid for in advance, and that provides for predetermined units or unlimited access to food or prepared food but does not include a dollar value that declines with use. The definition limits the applicability to those transactions that benefited from the sales tax exemption repealed in S.L. 2013-316. It does not apply to the part of a meal plan that is based on a declining card balance, such as the food dollars, because those transactions are taxed at the time they are made. By applying the tax to the gross receipts derived from the plan, it is clear that that the tax is based upon the amount paid for the plan and not upon the use of the plan.
(b)	Imposes a sales tax at the general rate upon the sales price of or gross receipts derived from a prepaid paid meal plan. The local sales tax also applies to an item taxed by the State at the general sales tax rate.
(c)	Sources the local sales tax revenue to the county where the school is located.
(d)	Addresses how to tax a transaction where one amount is paid for a taxable item (prepaid meal plan; meals) and a nontaxable item (declining card balance; tuition; room). In that instance, tax applies to the allocated price of the prepaid meal plan. The tax applies to items purchased with a dollar value that declines with use as the dollar value is used. Tuition and room are not subject to sales tax.
(e)	This subsection does two different things: Clarifies that the remaining sales tax exemption for meals sold in elementary and secondary schools applies to any school regulated under Chapter 115C. Public K-12

	schools, private K-12 schools, regional schools, and home schools are regulated under Chapter 115C. Residential schools are regulated elsewhere.[4] The bill removes the words "not for profit" because meals provided to K-12 students take many forms. This change ensures that the tax treatment for meals sold in elementary and secondary schools remains unchanged until the General Assembly makes a policy choice to tax them differently. Exempts food and prepared food used to prepare a meal for consumption under a prepaid meal plan from sales tax because this transaction is analogous to a sale for resale.
(f)	Provides schools with an option for reporting and remitting sale tax revenue derived from a prepaid meal plan to the State. The option allows the institution to contract with the food service contractor to be liable for the collection and remittance of the tax. At least one university has a contract with its food service contractor to remit the tax to the State on behalf of the university. The university remains the retailer under the sales tax laws because it is the person making, offering, and soliciting the sale of the prepaid meal plan. The tax will apply to the gross receipts the university derives from the prepaid meal plan; this amount includes the amount charged the university by the food service contractor and any other expenses included by the university in the price it charges for the prepaid meal plan. Under this option, the retailer (institution) would send the tax receipts collected to the food service contractor and the food service contractor would send the receipts, along with other tax receipts, to the Department of Revenue.

EFFECTIVE DATE: This Part of the act would become effective when it becomes law and applies to gross receipts derived on or after that date. Colleges and universities will begin billing for the fall semester in July, and payments will be received primarily during the months of July and August.

PART V. ADMISSIONS

SUMMARY: Part V of the Omnibus Tax Changes bill draft addresses sales tax issues associated with the expansion of the sales tax base to include gross receipts derived from admissions to a live event, a movie, and other attractions for which an admission is charged.

CURRENT LAW: S.L. 2013-316 changed the taxation of live events and movies from a 3% gross receipts privilege tax to a State and local sales tax. The two taxes differ in that the gross receipts tax was imposed upon the person engaged in providing the event; it was not designed to be passed directly onto the consumer. The sales tax is imposed upon the retailer, but it is intended to be passed onto the purchaser and borne by the purchaser instead of the retailer.[5] The payment of the tax is considered a debt from the purchaser to the retailer until it is paid. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser. The tax should be stated and charged separately unless the retailer displays a statement indicating the sales price includes the tax.

The gross receipts tax was payable monthly and the return covered the gross receipts received during the previous month.[6] The sales tax is due quarterly, monthly, or bi-monthly depending upon the tax liability of the retailer.[7] The administration of the sales tax is more defined to ensure uniform tax treatment. North Carolina is also a member state in the Streamlined Sales Tax Agreement. One of the purposes of

[4] The School of Math and Science and the School of the Arts are part of the UNC system.
[5] G.S. 105-164.7.
[6] By practice, some taxpayers remitted the gross receipts tax at the time the event occurred.
[7] G.S. 105-164.16.

this Agreement is to ensure uniformity among the participating states so the tax may be more efficiently administered by retailers who conduct business in more than one state.

BILL ANALYSIS: This Part makes the following changes to the laws applicable to sales tax on the gross receipts derived from an admission charge:

Subsection	Explanation
(a)	Clarifies that for purposes of the imposition of sales tax, the term "gross receipts" has the same meaning as the term "sales price". "Sales price" is defined to be the total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. This subsection also removes the details concerning how amusements are taxed and moves those provisions to a new statute in subsection (c) of this section. The imposition of the tax itself remains in G.S. 105-164.4.
(b)	Sources the local sales tax revenue derived from admission charges to the location where admission to the entertainment activity may be gained. When the location where admission may be gained is not known at the time of the transaction, the general sourcing principles of G.S. 105-164.4B(a) apply: the business location where the product is received; the location where the product is received; the location indicated by the address of the purchaser.
(c)	Creates a new statute to address the taxation of admission charges: • It defines an "admission charge" as the gross receipts derived for the right to attend an entertainment activity. An entertainment activity is defined as a live performance, a movie, a museum or similar attraction and a guided tour of that attraction. The bill does not expand the definition the types of entertainment subject to the tax. The policy decision of what types of entertainment to include in the sales tax base was made in S.L. 2013-316. It defines an "amenity" as a feature that increase the value of an entertainment activity by giving the person access to items that are not subject to sales tax and that are not available with purchase of admission to the event without the feature. Lastly, it defines a facilitator. The law enacted last session did not define "admission charge" or "amenity". A definition of "facilitator" is needed to accomplish the administration of the tax as provided in this subsection. • It provides that a retailer is the operator of the venue where the entertainment activity occurs. In practice, admission to an entertainment event may often be obtained at multiple places from multiple people. To accommodate this business practice, the bill does the following: o Provides that a person who provides the entertainment and received admission charges directly from purchaser is a retailer. This provision would allow a person, such as the symphony, that leases space to perform to be a retailer. In this example, the venue would also be a retailer if the venue also sells admission to the symphony event. o Provides the operator of the venue and a facilitator may have a contractual agreement for dual reporting. Dual remittance will allow the operator of the venue to remit the tax on the admission charge and the facilitator to remit the tax on any other charges the facilitator imposed that were necessary for the purchaser to pay to complete the transaction.

	• It defines a facilitator as a person who accepts payment of an admission charge to an entertainment activity and is not the operator of the venue where the entertainment activity occurs. It requires the facilitator to report to the retailer the admission charge a person pays to the facilitator and to send to the operator the tax due on the gross receipts derived from an admission charge no later than 10 days after the end of each calendar month. A facilitator that does not send this amount to the retailer is liable for the tax due. These requirements are considered terms of the contract between the retailer and the facilitator. These provisions are the same as the provisions applicable to facilitators who accept payment from a consumer for accommodations. • It clarifies what transactions are not subject to the tax: o Amounts paid to participate in sporting events. o Tuition, registration, or any other charge to attend an instructional or educational seminar, workshop, or conference. o A political contribution. o A charge for lifetime seat rights, leases, or rental of a suite or box, provided the charge is separately stated. o An amount paid solely for transportation. • It clarifies the following exemptions from the tax: o The portion of a membership charge that is deductible as a charitable contribution under federal income tax laws. o A donation that is deductible as a charitable contribution under federal income tax laws. o Charges for an amenity. • It changes the events that are exempt from the tax to the following: o An event sponsored by an elementary or secondary school. o An event sponsored by a nonprofit that is exempt from income tax if all of the following conditions are met: the entire proceeds of the event are used exclusively for the entity's nonprofit purpose; the entity does not compensate members or individuals; the entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event. • It repeals the following exemptions, thus subjecting the gross receipts derived from an admission charge to that event to sales tax, effective January 1, 2015: o An agricultural fair. o Up to two activities a year sponsored by a nonprofit.[8] o A State attraction.

[8] A subcommittee of the Revenue Laws Study Committee recommended that similar events be taxed similarly, regardless of the entity providing the event. This policy decision led to the repeal of these exemptions. The subcommittee also found that the exemptions caused confusion re: what was a State attraction and what two events could be exempt. This confusion should be eliminated by the repeal of these exemptions.

(d)	Makes a conforming change to the exemption statute. This subsection becomes effective January 1, 2015.
(e)	Clarifies that long-standing exemptions applicable to tangible personal property sold by nonprofit entities do not apply to gross receipts derived from an admission charge to an entertainment activity.
(f)	Provides that the gross receipts derived from admission to a live event purchased on or after January 1, 2015, will be taxable under the sales tax statutes, regardless of the date of the initial sale of tickets. S.L. 2013-315 provided a transitional period. Under S.L. 2013-316, the gross receipts for a live event where the initial sale of admission occurred on or before January 1, 2014, are taxable under the old 3% gross receipts privilege tax statutes.

EFFECTIVE DATE: Except as otherwise provided, this Part of the act would become effective January 1, 2015.

PART VI. SERVICE CONTRACTS

SUMMARY: Part VI of the Omnibus Tax Law Changes bill addresses sales tax issues associated with the expansion of the sales tax base to include the sales price of a service contract.

CURRENT LAW: S.L. 2013-316 expanded the sales tax base to include the sales price of a service contract. A service contract is defined as a warranty agreement, a maintenance agreement, a repair contract, or a similar agreement or contract by which the seller agrees to maintain or repair tangible personal property. The act exempted from the tax items exempt from sales tax, other than motor vehicles; network assets on utility owned lands and on right-of-ways or easements; and items purchased by a professional motorsports racing team for which the team may receive a sales tax refund. The act also exempted an item used to maintain or repair tangible personal property pursuant to a service contract if the purchaser of the contract is not charged for the item.

BILL ANALYSIS: This Part makes the following changes to the law applicable to the sales tax on service contracts:

Subsection	Explanation
(a)	Changes the definition of a service contract to alleviate confusion about who must provide the work under the service contract for the contract to be taxable. In practice, service contracts are often sold by a seller on behalf of the person obligated to provide the service. This subsection changes the definition of a service contract to be a contract where the obligor under the contract agrees to maintain or repair tangible personal property or a motor vehicle.
(b)	Clarifies in the sales tax imposition statute that the tax applies to the sales price of or the gross receipts derived from a service contract.
(c)	Creates a new statute to address the sales tax on service contracts: • It clarifies that the local sales tax revenue from a service contract are sourced in accordance with the general sourcing principles of G.S. 105-164.4B. • It defines a retailer as the obligor when the obligor sells the service contract to the purchaser at retail. If the service contract is sold to the purchaser by a facilitator, the

	facilitator is the retailer unless the facilitator and the obligor have a contractual agreement that the obligor will be liable for payment of the tax. In this instance, the facilitator must send the retailer the tax due on the sales price of or the gross receipts derived from the service contract within 10 days after the end of each calendar month. A facilitator that does not send the retailer the sales tax due is liable for the tax. A facilitator is defined as a person who contracts with an obligor to market the service contract and accept payment for the contract. These provisions are substantially the same as the provisions that apply to a facilitator who accepts payment of sales tax on accommodations. • It moves the exemptions from G.S. 105-164.13 and places them in the newly created statute. • It adds an exemption for items subject to tax under Article 5F, the 1% excise tax on mill machinery and other similar transactions. • It clarifies that the tax does not apply to service contract for items sold at retail that become part of real property unless the service contract is sold at the same time as the item of tangible personal property covered in the contract. The tax does not apply to security or similar monitoring contracts for real property or to a renewal of a service contract where the tangible personal property covered by the contract becomes part of or affixed to real property prior to the effective date of the renewal. • It requires a retailer to report the sales price of or gross receipts derived from a service contract on an accrual basis, so that the receipts are recognized when the transaction occurs rather than when payment is received. Some service contracts are financed over time. This provision clarifies that the sales tax is due at the time of the retail sale and not at the time of the periodic payments.
(d)	Creates a new statute for refunds of sales tax paid on a rescinded sale or a cancelled service. Historically, retailers have provided purchasers a refund of the sales tax paid on tangible personal property that is returned to the retailer for a refund. The retailer is allowed to reduce taxable receipts on the subsequent sales tax return by the taxable amount of the refund for the period in which the refund occurs or may request a refund of an overpayment of tax. This section codifies this current practice. The new statute creates a process to allow a purchaser of a service contract a refund of the sales tax paid. The process is different for a service contract because often the refund is provided by a person who was not the retailer that sold the service contract. This situation becomes more uncertain when the service contract is for a motor vehicle. Under the bill, if the purchaser receives a refund on any portion of the sales price of a service contract purchased from the retailer who collected the sales tax on the retail sale, then the general provisions applicable to rescinded sales apply. If the purchaser receives a refund from anyone else and the amount refunded does not include the sales tax paid on the refundable amount, then the purchaser may apply directly to the Department of Revenue for a refund. An application for a refund must be supported by documentation on the taxable amount of the service contract refunded to the purchaser and it must be filed within 30 days after the refund is received. A sales tax refund filed after the due date is barred.
(e)	Makes a conforming change.
(f)	Clarifies the exemption applicable to an item used to maintain or repair tangible personal property pursuant to a service contract. The exemption does not apply to an item used to

	maintain or repair mill machinery and other items taxable under Article 5F, since the service contract applicable to this tangible personal property is not subject to tax. The exemption does not apply to a tool, equipment, or similar item of tangible personal property used to complete the maintenance or repair unless the item becomes a component or repair part of the item for which the service contract is sold. For example, the exemption does not apply to the hammer and screwdriver used to do the work under a service contract.
(g)	Clarifies that the gross receipts derived from a service contract for a motor vehicle are not subject to the highway use tax.
(h)	Conforming change to the local sales tax statutes.

EFFECTIVE DATE: This Part of the act would become effective October 1, 2014.

PART VII. RETAILER-CONTRACTORS

SUMMARY: Part VII of the Omnibus Tax Law Changes bill addresses the applicability of the sales tax laws to retailer-contractors, such as the major home improvement stores, when they are engaged in a performance contract rather than a retail sale. Specifically, a retailer-contractor would be considered the consumer of the items or materials they furnish and install or apply to real property to the extent the item becomes part of the real property. As the consumer of those items, the retailer-contractor would be responsible for payment of the tax rather than the customer. This Part would become effective January 1, 2015.

CURRENT LAW: Under current law, retailers are required to collect and remit sales tax on retail sales of tangible personal property. Under a performance contract, the contractor agrees to furnish the necessary materials, labor, and expertise to accomplish the job; it is not a contract for the sale of specific items. Contractors are deemed to be the consumers or end users of the tangible personal property they use in fulfilling performance contracts and are liable for the tax. However, when a customer purchases an item from a home improvement store and enters into a contract with the store for the installation of the item in their home, it is not always clear whether that transaction is a retail sale plus installation or a performance contract.

The statutes provide little guidance as to what the correct interpretation is. They do not define "contractor" or "performance contract" or speak to when the installation of tangible personal property constitutes a real property improvement. The definition of "sale" refers to when title or possession is transferred. When a contractor permanently affixes an item of tangible personal property to real estate, title and possession typically transfer upon installation. However, once the item is permanently affixed to real property, general principles of real estate law provide that the item is no longer tangible personal property but has transformed into a real property fixture. Therefore, when a homeowner obtains title or possession to the property, the property is real estate and, therefore, one could argue no retail sale of tangible personal property has occurred. Adding further confusion to the mix, North Carolina's definition of "retailer" includes the business of installing tangible personal property regardless of whether it is permanently affixed to real property. This definition suggests that all contractors are also retailers, which conflicts with other principles at play.

The Department has developed guidance on this issue through its technical bulletins, and the tax treatment is ultimately determined by looking at a number of factors, such as whether an item is sold with an installation agreement, the tenor of the agreement, if there is one, whether an item is pre-fabricated, whether an item is built on-site, and whether a specific quantity is stated in the agreement.

Determining the tax consequences involves a complex and fact-specific analysis. Over the years, the guidance has been inconsistent and, at the very least, confusing. For example, the sale and installation the same item, such as carpet, may have different tax treatment depending on who the seller is and how the transaction is structured. Also, transactions that seem to be similar in nature, such as the installation of countertops and cabinets, are treated differently as well.

For several years, the Department has sought clarification from the General Assembly on this issue. The Revenue Laws Study Committee first studied it in 2012, with no recommendation, and again in 2013 recommending this legislation.

BILL ANALYSIS: Part VII of this act provides that the general rate of tax applies to the sales price of tangible personal property sold to a real property contractor when that property is used by the contractor for the improvement, alteration, or repair of real property and the item becomes part of the real property. The bill defines the term "retailer-contractor" as an entity that can act either as a retailer or as a real property contractor. The sales tax provisions applicable to a real property contractor would apply to a retailer-contractor when it is acting as a real property contractor. Retailer-contractors may continue to make tax-exempt purchases of materials, as they do now, but would accrue and pay the tax once the items are withdrawn from inventory and used in the performance of a real estate improvement contract. If the retailer-contractor uses a subcontractor to perform the installation, then the subcontractor would pay the tax on any items the subcontractor purchases in fulfilling the contract. However, in accordance with existing use tax principles, the retailer-contractor and the subcontractor would be jointly and severally liable for the tax.

The second part of the proposal holds harmless retailers that have been following the law as interpreted by the Department, such as Home Depot, as well as retailers who have asserted that the Department's interpretation is inconsistent with existing statutes, such as Lowe's.

EFFECTIVE DATE: This Part of the act would become effective January 1, 2015, and would apply to sales on or after that date and contracts entered into on or after that date.

BACKGROUND: This issue drew particular attention in 2009 when newspaper reports revealed a long-running dispute between Lowe's and the Department of Revenue on the application of the law in this area. The report indicated that Lowe's was not collecting sales tax when it sold and subsequently installed items such as cabinets, flooring, and countertops. The Department's position is that these transactions are retail sales plus installation and that Lowe's should be collecting sales tax on the purchases but not the installation charges as long as those charges are separately stated on the customer's invoice. Lowe's position is that these transactions are performance contracts and, therefore, they are only required to pay the use tax because they are the user or consumer of that property and that the cost is factored into the "contract price" ultimately paid by the customer, but it is not a separately stated cost.

PART VIII. OTHER SALES TAX CHANGES

SUMMARY: Part VIII of the Omnibus Tax Law Changes bill makes various sales tax changes.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Section	Explanation	Effective Date
8.1	This section moves the substance of the law imposing the State sales tax on accommodations to a new statutory section for stylistic purposes. The only substantive change provides that a private residence or cottage rented for fewer than 15 days that is listed with a real estate broker or agent is subject to sales tax and occupancy tax. Beginning in 1984, the	This section would become effective June 1, 2014, and apply to private

	Department of Revenue interpreted the private residence exemption to apply only if the residence was not listed with a real estate agent. A 1988 memo by an Associate Attorney General supported this interpretation. In 2012, the Department changed its interpretation and issued an Important Notice indicating that the sales tax exemption applied to a private residence rented for fewer than 15 days regardless of whether it was listed with a real estate agent. The current law states that "*The tax does not apply to a private residence or cottage that is rented for fewer than 15 days in a calendar year...*", but it goes on to state that "*A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax.*" The Department has requested that language be added to the statute that is consistent with its pre-2012 interpretation. This change would impact the application of occupancy tax as well because G.S. 155A-155 and 160A-215 provide that "*the room occupancy tax applies to the same gross receipts as the State sales tax on accommodations and is calculated in the same manner as that tax.*"	residences occupied as a transient accommodation on or after that date even if the accommodation was reserved or paid for prior to the effective date.
8.2	This section disallows a sales tax refund for sales tax paid on video programming and piped natural gas. Historically, the State sales tax refunds allowed to nonprofits and local governments has not applied to sales tax paid on utilities. Prior to 1995, when piped natural gas was subject to sales tax, piped natural gas was included in the list of utilities for which a sales tax refund was not allowed. Last session, when the General Assembly made the policy decision to return piped natural gas to the sales tax base, this conforming change was not considered or made. Likewise, when the General Assembly made the policy decision to begin taxing video programming as a utility, a conforming change to the refund statutes was not considered or made. This section treats utilities that are taxed by the State at the combined general rate the same.	This section becomes effective July 1, 2014, and applies to purchases occurring on or after that date.
8.3	Subsection (a) repeals the sales tax exemption for sales from vending machines of one cent per sale. The provision is obsolete. S.L. 2013-316 removed the sales tax exemption applicable to newspapers sold by street vendors, newspaper carriers, and vending machines. The intent was to tax all newspapers at the State and local sales tax rate. However, G.S. 105-164.13(50) exempts 50% of the sales price of items sold through a coin-operated vending machine from sales tax. To maintain the intent of the 2013 tax law change, subsection (b) provides that the sales tax exemption applicable to 50% of the sales price of items sold through a vending machine does not apply to newspapers. The law currently excludes tobacco products sold through vending machines from this 50% exemption.	This section becomes effective October 1, 2014, and applies to sales made on or after that date

8.4	Effective January 1, 2014, S.L. 2013-316 increased the State sales tax rate on manufactured and modular homes. In response to industry concerns, this section imposes the tax on ½ of the price of the home by exempting 50% of the sales price from sales tax. The industry states that the average material cost in a factory-built home is approximately 50% of the invoice price. The intent of this section is to more closely tax manufactured and modular homes in a similar manner as stick-built homes.	This section becomes effective July 1, 2014.

PART IX. EXCISE TAX CHANGES

SUMMARY: Part IX of the Omnibus Tax Law Changes bill makes various changes to the excise tax statutes, as requested by the Excise Tax Division of the Department of Revenue.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Section	Explanation	Effective Date
9.1	Subsection (c) of this section applies to the excise tax on alcohol. It would allow a wholesaler or importer of malt beverages and wine to provide security to the Secretary in the form of a letter of credit as an alternative to a bond. This form of security is consistent with what is currently allowed under the excise tax statutes for motor fuels and tobacco products. This subsection also removes the option of a taxpayer providing security in the form of a bond based upon obligations of a governmental unit. This option has not been used in recent memory and is not a form of collateral allowed in other tax schedules. In the few instances where it has been used, the Department's experience has shown that the bonds are often rolled over into a personal CD when the bond matures rather than another governmental bond. Subsections (a) and (b) of this section modernize the statutes and clarify that the letter of credit must be issued by a bank acceptable to the Secretary and available to the State as a beneficiary.	When it becomes law
9.2	This section would allow a wholesale dealer or retail dealer of other tobacco products to provide the Department a manufacturer's tax affidavit in lieu of a notarized tax affidavit as supporting documentation for a tax refund. A dealer that has stale or unsalable tobacco products upon which the tax has been paid is allowed a refund of that amount. The majority of states allow a dealer to use manufacturer tax affidavits as supporting documentation. The allowance of a written certification from the manufacturer signed under perjury of law does not lessen the accountability of the taxpayer and it expedites the administration of the refund. The change in the statute has been requested by taxpayers.[9]	When it becomes law

[9] U.S. Smokeless Tobacco Brands operates a secure website that allows distributors to access affidavits and credit memos for their returns. Each affidavit includes an accurate list of product eligible for return in a state along with an electronically signed statement.

9.3	This section would amend the tax secrecy provisions as follows: • To allow the Department to furnish a data clearinghouse the information required to be released in accordance with the State's agreement under the December 2012 Term Sheet Settlement, as finalized by the State in the NPM Adjustment Settlement Agreement, concerning annual tobacco product sales by a nonparticipating manufacturer.[10] • To allow the Department to share information with a person who provides a surety bond or irrevocable letter of credit on behalf of a taxpayer if the information is necessary for the Department to collect on the bond or letter of credit in the event the taxpayer does not comply with the tax laws.	When it becomes law
9.4	This section would allow the Secretary of Revenue to delegate the authority to hold hearings. Under administrative practice, this authority has been delegated to a staff attorney.	When it becomes law
9.5	This section clarifies that the tax on motor carriers applies to both intrastate motor carriers and to interstate motor carriers. It also updates the reference to the International Fuel Tax Agreement from June 1, 2010, to July 1, 2013. The update in the reference does not make any substantive changes to the tax laws concerning motor carriers.	When it becomes law
9.6 9.10	Section 9.6 clarifies that local sales tax is due on motor fuel for which a refund of the per gallon excise tax is allowed. Under current law, the State sales tax is deducted from any amount of excise tax refunded. This section clarifies that the local sales tax revenue is also deducted from any amount of excise tax refunded. Section 9.10 clarifies the amount of local sales tax to be deducted from a refund of excise tax paid.	When it becomes law
9.7	This section would tax all biodiesel fuel. B100 is not subject to federal excise tax, and as such is not subject to the State excise tax. B99.9 is subject to the State excise tax since it is a blended product. B100 is most commonly used as a motor fuel.	October 1, 2014
9.8	This section would allow the Secretary to waive or reduce civil penalties imposed under the motor fuel tax statutes under the Department's penalty waiver policy used for other tax schedules. Under current law, a person assessed a civil penalty under the motor fuel tax laws must pay the penalty at the time it is assessed and file a request for a Departmental review of the penalty. Under the change proposed by this section, the penalty would not automatically be payable upon assessment and the administrative process for waiving or reducing it would be simpler and less time consuming. Although a taxpayer must go through the review process for the waiver or reduction of a penalty, the guidelines used to make the decision are the same guidelines currently applied through the penalty waiver policy.	When it becomes law

[10] S.L. 2013-360, the Current Operations and Capital Improvements Appropriations Act of 2013, shows $137,500,000 in adjustments to availability for both FY13-14 and FY14-15 associated with the Tobacco Mast Settlement Agreement.

9.9	This section would clarify that a shipping document required by the vessel transporting motor fuel is intended to provide permanent information. Under current law, if the document is issued by a refiner or a terminal operator, the document must be machine printed. That requirement is not there for a tank wagon importer. A tank wagon importer is a person who imports motor fuel from a terminal or bulk plant in another state and transports the fuel only by means of a tank wagon. A tank wagon is a truck designed to carry at least 1,000 gallons of motor fuel but is not a transport truck. Motor fuel investigators have found shipping documents to be notes contained on a "grease board" or chalk board or other type of device that can be erased.	October 1, 2014
9.10	Removes obsolete references to the privilege tax.	

PART X. TAX LAW COMPLIANCE CHANGES

SUMMARY: Part X of the Omnibus Tax Law Changes bill would require filing all State tax returns and paying all State taxes to receive and hold an ABC permit. Part X of the bill draft also would authorize the Department of Revenue to use $500,000 (currently, $150,000) from the collection assistance fee account to contract for taxpayer locater services.

CURRENT LAW: G.S. 18B-900 lists the following requirements to receive and hold an ABC permit:

- Be at least 21 years old (19 years old for managers selling only beer and wine).
- Be a NC resident unless the out-of-state person is not responsible for operations.
- Not have been convicted of a felony within 3 years or had citizenship restored.
- Not have been convicted of an alcoholic beverage offense within 2 years.
- Not have been convicted of a misdemeanor controlled substance offense within 2 years.
- Not have had an ABC permit revoked within 3 years except failures to pay registration fee.
- Not have an unsatisfied judgment for injury caused by sales to underage persons.

The requirements under G.S. 18B-900 apply to each of the following persons:

- Owner of a sole proprietorship.
- Managers for a corporation.
- Members of a general partnership.
- General partners in a limited partnership.
- Managers and any members with 25% interest in a limited liability company.
- Each officer, director, and owner of 25% of a corporation.

G.S. 18C-141 prohibits the Director of the North Carolina State Lottery Commission from recommending lottery game retailers to the Commission who are not current in filing all State tax returns and paying all State taxes.

G.S. 105-230 suspends the charter of any corporation or a limited liability company that fails to file any tax return or pay any tax. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect unless the charter is reinstated after filing and paying all taxes.

G.S. 105-243.1 imposes a 20% collection assistance fee on overdue tax debts after 90 days.[11] The collection assistance fee is credited to a special account and must be applied to the costs of collecting overdue tax debts.

BILL ANALYSIS: The bill would add a new requirement to G.S. 18B-900 that ABC permit applicants file and pay all State taxes. State taxes must be collectable and finally determined to be due for the tax to block an ABC application. This proposal closely follows the statute[12] requiring lottery retailers to file and pay all State taxes. The ABC Commission and the NC Department of Revenue plan to check the State tax compliance of all new and renewing ABC permits starting May 1, 2015.

Procedurally, the ABC Commission will request the Department of Revenue check the State tax compliance status of persons. If the Department of Revenue reports to the ABC Commission that a person is not in State tax compliance, then the person cannot receive an ABC permit until the Department of Revenue reports to the ABC Commission that the person is in compliance. Taxpayers who enter into an installment payment agreement with the Department of Revenue are considered in compliance as long as the agreement is in force.

The requirement of State tax compliance operates like all ABC permit requirements under G.S. 18B-900 – applying to all persons listed in G.S. 18B-900(c) and applying continually to hold a permit. Four types of ABC permits may still be issued without State tax compliance: special occasion permit under G.S. 18B-1001(8), limited special occasion permit under G.S. 18B-1001(9), special one-time permit under G.S. 18B-1002, and salesman permit under G.S. 18B-1111.

Subsection (b) of Section 10.1 provides that the Administrative Procedure Act (Chapter 150B) does not apply to the ABC Commission's actions when determining State tax compliance and refusing to issue ABC permits and subsection (c) allows the necessary exchange of confidential taxpayer information between the Department of Revenue and the ABC Commission is authorized.

Lastly, this Part authorizes the Department of Revenue to spend $500,000 annually on taxpayer locater services. The current authorization is $150,000. The source of the funds is the collection assistance fee imposed on overdue tax debts. The collection assistance fee provides funds to pay for the costs of collecting overdue tax debts which have included personnel at the Department of Revenue that collect taxes, locator services, and infrastructure projects at the Department of Revenue. When attempting to collect overdue taxes, the Department of Revenue uses locator services through contracts with private data services to identify current addresses for taxpayers.

EFFECTIVE DATE: The tax compliance requirement for ABC permits would become effective May 1, 2015. The increase in the amount of the collection assistance fee that may be used to fund locator services would become effective when it becomes law.

PART XI. PROPERTY TAX CHANGES

SUMMARY: Part XI of the Omnibus Tax Law Changes bill provides for the central assessment of mobile telecommunications property.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE: Under current law, the property is locally assessed by each county. The valuation of this property has become increasingly complex due largely to the rapidly changing technology in the industry and to the frequent acquisitions and mergers of wireless carriers. Central assessment by the Department would simplify the listing process for the

[11] The Department of Revenue may not mail the collection assistance fee notice earlier than 60 days after the tax debt becomes collectible under G.S. 105-241.22. A collection assistance fee is imposed on an overdue tax debt that remains unpaid 30 days or more after the fee notice is mailed to the taxpayer.
[12] G.S. 18C-141.

industry and ensure uniformity of assessment among the counties. The change is supported by the mobile telecommunications industry, the Department of Revenue, and local governments.

The central assessment would apply to all of the tangible personal property of a mobile telecommunications company and would also include the cellular towers owned by such companies as well as the cellular towers owned by "tower aggregators." Real property owned or leased by a mobile telecommunications company or tower aggregator would continue to be assessed locally in each county. This section would become effective for taxable years beginning on and after July 1, 2015.

PART XII. PRIVILEGE LICENSE TAX CHANGES

SUMMARY: Part XII of the Omnibus Tax Law Changes bill would repeal the existing authority for cities to levy a privilege license tax and would replace it with a new authorization for cities to levy a business tax of up to $100 on each business location within the city. The new authorization would remove all of the prior restrictions and caps on certain businesses with the exception of certain utilities for which cities receive a share of tax revenue. It also repeals the more limited county authority to levy a privilege license tax. This Part would become effective July 1, 2015.

CURRENT LAW & BILL ANALYSIS:

Levy and Scope. – Under current law, a city has the authority to levy a privilege tax on all trades, occupations, professions, businesses, and franchises carried on within the city, subject to certain limitations.[13] These limitations range from outright prohibitions on certain businesses and professions to a cap on the amount of tax for other types of businesses. Otherwise, there is no statutory restriction on the amount of tax that may be charged. It may be in the form of a flat tax or a tax measured by gross receipts. Over 300 cities levy a privilege tax, producing significant revenue for about seven cities: Charlotte, Raleigh, Greensboro, Durham, High Point, Lumberton, and Hickory.

Under this proposal, cities would have the option of levying a business tax of up to $100 on each business operating within the city. A "business" is broadly defined as a retailer, a wholesale merchant, a service provider, a manufacturer, a franchise, or a nonprofit other than a 501(c)(3). The tax would apply to each business location. "Location" is defined as a uniquely identifiable geographic site or place from which one or more business units wholly or partly operates on a permanent or temporary basis. Accordingly, a business would be subject to the tax for each of its locations within a city, and a single location may house more than one business entity. Under current law, a business need not have a physical location within a city in order to be taxed; the business or trade need only be "carried on" within the city. For example, a landscaping company that has its only office in City A and performs landscaping services in Cities B, C, and D may be taxed by all of those cities. Under this proposal, the company could only be taxed in the city in which it has its physical business location.

This proposal also eliminates the multitude of restrictions and caps on various types of trades, businesses, and professions that exist either by virtue of the repealed Schedule B or existing State privilege license tax statutes. For example, cities are currently prohibited from levying a privilege license tax on certain professionals who are taxed at the State level, such as attorneys, physicians, engineers, real estate brokers, and home inspectors. This proposal removes that restriction but limits the local tax to the business entity that employs the individual or with whom the individual is otherwise affiliated. Other businesses that cities are currently prohibited from taxing include banks, private

[13] G.S. 160A-211(a), the subsection that authorizes cities to levy a privilege license tax, was inadvertently repealed in Section 58(b) of S.L. 2013-414. The repeal was a drafting error as evidence by the fact that Section 58(d) of that same act amends the same subsection and leaves the remainder of the statute intact. Section 12.1 of this proposal reenacts the provision to correct the error.

protective services, burglar alarm dealers, household appliance dealers, and office equipment dealers. These restrictions are removed.

Approximately 64 types of businesses are subject to a cap on the amount of tax that a city may impose. Examples of businesses whose rate is capped at less than $100 include: amusements, $25; collection agencies, $50; peddlers of farm products, $25; contractors, $10; restaurants, $42.50; barbershops & beauty parlors, $2.50 per person employed; firearms dealers, $50; auto dealers, $25.

Prohibition. – Just as under current law, cities would still be prohibited from levying any license, franchise, privilege, or business taxes on the following businesses because cities receive a share of sales tax revenue levied on these businesses:

- Piped natural gas
- Telecommunications
- Video Programming
- Electricity

Administration. – The business tax would be administered the same way that it is now. A city would have to adopt an ordinance setting out the rate schedule. The tax would be levied on an annual basis and would be due by July 1 of each year. The penalties and collection remedies would essentially be the same as they are now.

Counties. – Section 2 of the bill repeals a county's authority to levy a privilege license tax. Based on the most recent data available, only 37 counties levy a privilege license tax and generate a cumulative total of less than $500,000.

EFFECTIVE DATE: This Part would become effective July 1, 2015.

PART XIII. LICENSE PLATE AGENT COMPENSATION

SUMMARY: Part XIII of the Omnibus Tax Law Changes bill sets the LPA transaction rate for the collection of property tax under the Tax & Tag Together program at the transitional rate of $1.06, clarifies the increased rate applies to all transactions where an LPA collects property tax as of July 1, 2014, and allows the retroactive portion of the fee increase to be paid out over a three month time period.

CURRENT LAW: The Division of Motor Vehicles (DMV) is required to ensure, as far as practicable and possible, that registration and registration renewals for motor vehicles may be issued through license plate agents (LPAs) located in every community across the State. DMV enters into commission contracts with individuals to perform this service. The local tag agents are compensated on a per transaction basis. The standard rate for a transaction is $1.43. Unless otherwise provided, the performance of one or more transactions at the same time is considered a single transaction for purposes of compensation. Certain transactions are always considered separate transactions and allowed a different rate of compensation. The collection the highway use tax is considered a separate transaction and compensated at $1.27.

In September 2013, the State began implantation of a combined system for motor vehicle registration renewal and property tax collection. Under the new Tax & Tag Together program, the motor vehicle owner will receive one bill, and make one payment for both property taxes and vehicle registration renewal. The Tax & Tag Together program also provides for the issuance of a temporary registration plate if property taxes are not paid with the issuance of a new plate. A person may be issued a limited registration "T" sticker for the temporary registration plate.

S.L. 2013-372 provided increased compensation for LPAs new duties required under the Tax & Tag Together program. The collection of property taxes and the issuance of a "T" sticker" are recognized as

separate transactions for the purpose of compensation. The transaction rate for the issuance of a "T" sticker was set at $1.27, effective July 1, 2013. The transaction rate for collecting property tax with registration renewals for the transitional period of the first six months of the Tax & Tag Together program was set at $1.06. The transaction rate after the first six months for both new registration and renewals was set at $0.71.

BILL ANALYSIS: Part XIII sets the LPA transaction rate for the collection of property tax under the Tax & Tag Together program at the transitional rate of $1.06. The transitional rate will apply to the collection of property taxes with registration renewals for the entire 2013 fiscal year. The draft also clarifies the increased rate applies to all transactions where an LPA collects property tax, effective July 1, 2014, therefore, setting the transitional rate of $1.06 per transaction to all collections of property tax by LPAs for the 2014 fiscal year and thereafter.

Below is a chart that shows the recent changes in the compensation to LPAs, as well as the proposed increase:

	Transaction fee to LPAs for collection of:				
	Property tax with renewal		Property tax with new registration		Property tax with new registration and renewals
	July 2013 – March 2014	March 2014 – July 2014	July 2013 – March 2014	March 2014 – July 2014	July 2014 and thereafter
Prior to 2013-372	$0.48	$0.48	$0.48	$0.48	$0.48
2013-372	$1.06	$0.71	$0.71	$0.71	$0.71
Draft proposal	No change	$1.06	No change	No change	$1.06

Under current law, the fee for property tax collection by LPAs for renewals that expire on or after March 1, 2014, will decrease to $0.71. The draft extends the transitional rate of $1.06 for the collection of property tax with registration renewals that expire on or after June 30, 2014. If enacted, the draft proposal would direct DMV to calculate the difference in the payments made under the current law and the proposed increase in this draft by September 1, 2014. The difference in the two rates would be paid to LPAs by deducting the appropriate amount of the property tax revenues remitted to the counties. The payment to the LPAs and the corresponding reduction in the payments to the counties would be made in equal amounts over a three month period.

The bill also clarifies the increased fee for property tax collection applies to all transactions where a LPA collects property taxes, effective July 1, 2014.

DMV receives compensation from the counties for the duties it performs under the Tax & Tag Together program. A conforming change made in S.L. 2013-372 has been interpreted to provide DMV with an increase in the fee it receives for the collection of property tax to mirror the amount paid to LPAs. This draft maintains the increase in the fee to $0.71 for DMV provided in S.L. 2013-372, but does not provide DMV with the increase provide LPAs in this draft. The fee provided to DMV will be the amount set in the Memorandum of Understanding (MOU) signed by the Department of Revenue and the Division of Motor Vehicles. Future MOUs can amend the transaction fee paid to DMV, but the fee cannot exceed the per transaction fee allowed for LPAs.

EFFECTIVE DATE: The portion of this Part related to the fee for registration renewals would become effective March 1, 2014. The remainder of this Part would become effective July 1, 2014.

PART XIV. TECHNICAL, CLARIFYING, & ADMINISTRATIVE CHANGES

SUMMARY: ***Part XIV of the Omnibus Tax Law Changes bill makes clarifying, conforming, and administrative changes to the various tax laws. Unless otherwise stated, this Part would become effective when it becomes law.***

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Section	Explanation and Effective Date
14.1	This section corrects a cross reference.
14.2	This section replaces two outdated references with respect to qualifying for the major recycling facility tax credits. First, it replaces the term "enterprise tier one area" with the term "development tier one area." The current statute requires that, at the time the owner begins construction, the facility be located in an enterprise tier one area. The term "enterprise tier one area" was part of the Bill Lee tax credits, which expired in 2007. The current equivalent term, originating with the enactment of the Article 3J tax credits, is "development tier one area." A development tier one area is a county whose annual ranking is one of the 40 highest in the State. Second, it deletes the wage standard requirement to be consistent with the current law as it applies to a tier one area. In 2002, the General Assembly eliminated the wage standard for enterprise tier one and two areas[14] but a conforming change was not made to this statute. At the time, there was only one taxpayer that qualified for the credit, and the wage standard was only required to be met at the time construction began on the facility, which had already occurred. However, to the extent there may be taxpayers who qualify for this credit, which is only available in a tier one area, in the future, the statute should be amended to reflect the fact that the wage standard is no longer a requirement in a tier one area.
14.3	This section inserts a word that was inadvertently omitted.
14.4(a)	This section deletes the definition of "Dependent" because the term is not required after the changes made by House Bill 998, S.L. 2013-316.
14.4(b) &14.5	This section updates the terminology used in the statutes authorizing withholding of income tax from wages. After House Bill 998, S.L. 2013-316, "exemptions" are not part of the computation of estimated tax to withhold from wages. Instead, the Department of Revenue uses the term "allowances."
14.6	This section deletes a statutory formula used to calculate the amount of estimated tax to withhold from pension payments where the recipient fails to file a withholding tax form. After House Bill 998, S.L. 2013-316, the statutory formula no longer approximates recipient's tax liability. Recipients who do not complete the tax form to calculate withholding from pension payments will be treated the same as employees who do not complete the tax form.
14.7	This section makes technical changes to sales tax definitions. It deletes the word "retail" within the definition of "net taxable sales" because the term is already included by virtue

[14] S.L. 2002-172.

	of the definition of the term "gross sales." It also deletes the word "the" in the definition of "retailer" because "engaged in business" is the proper defined term.
14.8	This section makes various technical changes to the sales tax imposition statute.
14.9	This section clarifies that a facilitator who is liable for tax[15] must obtain a certificate of registration like other retailers. A facilitator is a person, other than a real estate agent, who contracts with a provider of an accommodation to market the accommodation and who accepts payment from the consumer for the accommodation. An example of a facilitator would be an online travel company like Expedia, Orbitz, or Priceline.
14.10	This section provides for the applicable due date for a sales tax payment if the due date falls on a weekend or holiday or on a day that the Federal Reserve Bank is closed, which prohibits a person from making a payment by ACH[16] Debit or Credit. These provisions are currently contained in an informational document on the Department's website, but there is not a specific statute, other than one that applies only to payment of property taxes.[17]
14.11	This section changes from March 1 to March 15 the annual due date for the captive insurance tax return. S.L. 2013-116 provided that the annual report due date for some captive insurance companies is March 1 and, for others, such as a pure captive, it is March 15. The tax returns for all captives are due March 1. This year, the pure captive insurance companies filed premium tax returns by the March 1 due date and attached to the return copies of pages from their annual reports in support of the premium information marked "draft" since the tax return was due before the financial statement. This issue would be eliminated by changing the due date for all premium tax returns to March 15.
14.12	This section makes one technical change and one substantive change. The technical change corrects a statutory reference. The substantive change would add a new criminal offense to the list of offenses for which the Secretary of Revenue may appoint employees of the Criminal Investigations Division to serve as revenue law enforcement officers. The new offense, which was created by the General Assembly in 2013, is for the possession, transfer, or use of an automated sales suppression device, informally known as "tax zapper software."
14.13	This section provides the Department of Revenue with guidance on how to treat amended returns filed under two repealed taxes. Subsections (a) and (b) provide guidance for amended returns filed under the franchise tax on electricity. Subsections (c) and (d) provide guidance for amended returns filed under the excise tax on piped natural gas. Subsections (e) and (f) clarify that only cities that received a distribution under the repealed franchise tax and excise tax will receive distributions from the new sales tax on electricity and piped natural gas. The Tax Reduction Act, S.L.2013-316, included electricity and piped natural gas in the

[15] Under G.S. 105-164.4(a)(3), a facilitator must send the retailer the portion of the sales price that the facilitator owes the retailer plus the tax due once the accommodation rental marketed by the facilitator is completed. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator failed to send.

[16] Automated Clearing House Debit is a method of payment that enables companies to electronically withdraw funds from bank accounts using bank routing numbers and individual account number.

[17] G.S. 105-395.1.

	State sales tax base while repealing the utility franchise tax on electricity and the excise tax on piped natural gas. A portion of both of the repealed taxes was shared with the cities. The Tax Reduction Act replaced the tax-sharing revenue under the repealed taxes with a distribution of part of the sales tax on electricity and piped natural gas. The amount distributed to each city under the sales tax is based on the distribution under the repealed taxes the last year those taxes were in effect. Utilities are allowed to file amended returns on the repealed taxes for up to three years. Amended returns filed on the repealed taxes can change both distributions under the repealed taxes and the amount to be distributed to cities under the new sales tax on electricity and piped natural gas. These sections provide guidance to the Department on how to treat amended returns that change past and future distributions. First, it provides that any additional funds needed for increases to past distributions under the repealed taxes can be drawn from the sales tax revenue. Second, it creates a date certain for the future distributions to be determined. The Department of Revenue will set the distributions for each fiscal year by September 15 using amended returns processed by the Department prior to July 31 of that year.
14.14	Property that is appraised at its present use value may remain in the program if the property is under an enforceable conservation easement that would qualify for the conservation easement tax credit. S.L. 2013-316 repealed the conservation easement tax credit for taxable years beginning on or after January 1, 2014. The repeal of the tax credit was not intended to effect property in the present use value program. This section puts the applicable provisions that were provided in the tax credit statutes in Chapter 113A and makes the necessary conforming changes in other statutes.
14.15	This section deletes an inconsistent effective date for the repeal of G.S. 105-159.2 which formerly allowed a taxpayer to checkoff a donation to the North Carolina Public Campaign Fund. Section 38.1.(f) of S.L. 2013-381 repealed G.S. 105-159.2 effective July 1, 2013. This section makes the effective date of a duplicative repeal in Section 21.1.(c) of S.L. 2013 360 effective at the same time.
14.16	This section updates from January 2, 2013, to December 31, 2013, the reference to the Internal Revenue Code. This change keeps the statute up to date, but does not result in any substantive changes because there have not been any federal tax law changes since January 2, 2013, that impact the calculation of North Carolina taxable income.
14.17	This section changes the name of the document filed by the Secretary of Revenue to release an erroneous tax lien. Currently, the Department of Revenue files a "certificate of release" that credit reporting agencies treat as a negative item on a credit report. The renamed document, "certificate of withdrawal," is expected to cancel the original tax lien without impacting the taxpayer's credit report. This section is effective when it becomes law.
14.18	S.L. 2013-157 made a number of changes to North Carolina's Limited Liability Company Act. Among the changes was a new defined term of "company official" defined as: "*Any person exercising any management authority over the limited liability company whether the person is a manager or referred to as a manager, director, or officer or given any other title.*" This section incorporates the new term into the responsible person statute, which provides for personal liability when certain taxes are not paid. The section also removes the limitation on the type of withholding taxes that can be

	collected from a responsible person. Current law allows the Department of Revenue to hold business operators liable for income tax withheld on employee wages. This section eliminates the requirement that the withholding be for employee wages. For example, withholding on independent contractors could now be collected from responsible persons. This section is effective when it becomes law.
14.19	This section updates a statutory reference.
14.20	S.L. 2013-316 repealed the individual income tax credit for property taxes paid on farm machinery. This section removes references to the tax credit that are no longer needed in the property tax statutes.
14.21	This section makes a technical correction by adding (32a) to the list of exempt inventories for which a person need not provide a report under G.S. 105-315 and makes stylistic changes to update the statute.
14.22	This section repeals an obsolete subsection. G.S. 105-537(d) provides that a county may not levy the one-quarter cent sales and use tax under Article 46 if it also levies the land transfer tax under Article 60. Article 60 was repealed by S.L. 2011-18.
14.23	This section corrects a Session Law reference in last year's Revenue Laws Technical changes act with respect to a local occupancy tax act.
14.24	This section creates a new limited registration plate for vehicles that are registered after the prior registration on the vehicle has expired. Current law provides for a limited registration plate for an initial registration, but there is not a similar provision for registration renewals. This section is designed to solve two customer service problems, one involving military service members, and the second involving appeals for vehicle valuations where the customer has not been given an opportunity to appeal the valuation. There are instances where an individual can choose not to renew the registration on a vehicle for a year or longer. As long as the vehicle is not being driven, this is allowed under the law. When the vehicle will be operated again, the owner must renew the vehicle registration. Under Tax & Tag Together, when the individual renews the registration, property taxes on the vehicle for the upcoming tax year are due at the time of renewal. Military service members – The federal Service Members Civil Relief Act provides that personal property (including vehicles) of service members is not subject to personal property taxes simply due to the fact that the member is serving in the state. Active duty service members often do not renew vehicle registrations when the member is deployed overseas. Under Tax & Tag Together, when a service member returns from deployment and seeks to renew a vehicle registration, the system will not allow the vehicle to be registered without payment of the property tax, even if the service member does not owe the tax. Valuation appeals – Under current law, individuals may appeal the valuation assigned to a motor vehicle for property tax purposes. Taxpayers are given notice of the valuation of the vehicle and the right to appeal on the combined property tax notice. The combined notice is sent 60 days prior when the taxes are due. However, if an individual has allowed the registration to lapse more than a year, the individual would not have received a bill and would not have received notice of the tax value for the upcoming property tax year.

	Under the current system, the taxpayer will not be able to renew the vehicle registration without paying the tax for which the taxpayer did not have the opportunity to appeal. This section allows a temporary limited registration plate to be issued in both of these circumstances. Once the limited registration plate is issued, the taxpayer would have 60 days to remedy the tax issue. Once the tax issue has been resolved, the taxpayer could apply for a permanent tag.

PART XV. TAX VAPOR PRODUCTS/PROHIBIT IN JAILS

SUMMARY: Part XV of the Omnibus Tax Law Changes bill would provide an excise tax of 5¢ per milliliter to be imposed on vapor products, would prohibit the use of vapor products in State correctional facilities, and would make it a criminal offense to for a person to provide a vapor product to an inmate of a local confinement facility and for an inmate to possess a vapor product.

CURRENT LAW: Under G.S. 105-113.5, cigarettes are taxed at 45¢ per pack. Other tobacco products (OTP), including pipe tobacco and roll-your-own tobacco is taxed under G.S. 105-113.35 at 12.8% of the cost of the product. The tax on cigarettes is paid by the distributor of the product. The tax on OTP products is payable by the wholesale dealer or retail dealer who first acquires or otherwise handles the product.

A vapor product, commonly known as an electronic cigarette, is a handheld device that produces vapor from a liquid. The liquid is generally heated to produce the vapor by a battery operated device. The liquid usually contains nicotine and sometimes contains flavors. The amount of the nicotine in the liquid can vary. Most electronic cigarettes are reusable. The liquid in the device can either be replenished replacing the cartridge that holds the liquid, or by manually refilling the liquid container.

In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act, which gave the US Food and Drug Administration (FDA) the authority to regulate new tobacco products including e-cigarettes, nicotine gels, cigars, pipe tobacco, and dissolvable nicotine products.

In April 2014, the FDA issued proposed rules to regulate e-cigarettes. The proposed rules will be subject to 75 days of public comment. The proposed rules deem e-cigarettes a "tobacco product" for the purpose of federal regulation. The rules further propose to subject e-cigarettes to the following restrictions:

- Enforcement against adulterated or misbranded products.
- Ingredient disclosure and reporting of harmful components
- No modified risk descriptors (light cigarettes)
- No free samples
- Premarket review
- Minimum age for purchase

G.S. 148-23.1 prohibits the use and possession of tobacco products anywhere on the premises of a State correctional facility. Exemptions are provided for use and possession for religious purposes consistent with the policies of the Department of Public Safety (DPS), and also for possession by employees or visitors within the confines of a motor vehicle located in a parking area if the tobacco product remains in the vehicle and the vehicle is locked when the employee or visitor exits the vehicle.

G.S. 14-258.1 provides that it is a Class 1 misdemeanor to do either of the following:

- To knowingly give or sell tobacco products to an inmate on the premises of a correctional facility or in the custody of a local confinement facility, or to a person for delivery to an inmate.
- For an inmate in the custody of a local confinement facility to possess tobacco products.

BILL ANALYSIS: This Part of the bill does two things:

Excise tax: Section 15.1 of Part XV would impose an excise tax of 5¢ per milliliter of the consumable product of vapor products. Vapor products are defined as noncombustible products that use a heating element to produce vapor from nicotine in a solution. The consumable product is the part of the vapor product that contains the nicotine liquid solution. All invoices for vapor products must contain the amount of the consumable product in milliliters.

The tax would be administered in a similar fashion to the tax on OTP. The tax will be paid the wholesale dealer or retail dealer who first acquires or otherwise handles the product. The tax does not apply to products sold outside the State, products sold to the federal government, or products distributed without charge. Taxes are paid monthly. Each dealer must keep sufficient records of vapor products transactions.

Wholesale dealers and retail dealers must obtain a license for each place of business that handles vapor products. The license fee for wholesale dealers is $25, and the license fee for retail dealers is $10.

Taxpayers that timely file returns and payments of the taxes on OTP are allowed a discount of 2% of the amount due. This discount will not apply to the tax on vapor products.

No vapor in prisons and jails: Section 15.2(a) of Part XV prohibits the use of vapor products in State correctional facilities. Exemptions are provided for use and possession for religious purposes consistent with the policies of DPS, and for possession by employees or visitors within the confines of a motor vehicle located in a parking area if the vapor product remains in the vehicle and the vehicle is locked when the employee or visitor exits the vehicle.

Section 15.2(b) it a Class 1 misdemeanor for either of the following:

- To knowingly give or sell vapor products to an inmate on the premises of a correctional facility or in the custody of a local confinement facility, or to a person for delivery to an inmate.
- For an inmate in the custody of a local confinement facility to possess vapor products.

EFFECTIVE DATE: The provisions related to imposing the excise tax on vapor products would become effective February 1, 2015. The provisions related to vapor products in State and local confinement facilities would become effective December 1, 2014.

PART XVI. CHANGE CORPORATE APPORTIONMENT FORMULA TO FOUR TIMES THE SALES FACTOR

SUMMARY: Part XVI of the Omnibus Tax Law Changes bill amends the apportionment formula for the calculation of corporate income and franchise tax.

CURRENT LAW: In order to tax multistate corporations, states must determine the amount of the corporation's business that is attributable to that state for tax purposes. States make this determination by calculating an apportionment percentage. Multistate corporations multiply their income and franchise tax base by this apportionment percentage to calculate their corporate tax liability.

States generally look at three factors to calculate the apportionment percentage:

- The percentage of the corporation's property located in the state.
- The percentage of the corporation's payroll located in the state.

- The percentage of the corporation's sales in the state.

The states vary in how they assign weight to these three factors. An equally weighted apportionment formula would provide that each of the three factors are weighed equally. For most corporations, North Carolina currently uses the property, payroll, and sales factor with a double weighted sales factor.[18] North Carolina currently uses single sales factor apportionment for excluded corporations[19], public utilities, and capital intensive corporations[20].

BILL ANALYSIS: Part XVI of the act amends the apportionment formula for the calculation of corporate income and franchise tax by moving from a double weighted sales factor to a four-time weighted sales factor. The change to the apportionment formula does not change the tax liability of the majority of North Carolina companies because their sales are entirely within the State. Of our neighboring states, South Carolina and Georgia use single sales factor apportionment and Virginia uses double-weighted sales with an option to use single sales factor apportionment for manufacturing and retail companies.

EFFECTIVE DATE: This Part of the act would become effective for tax years beginning on or after January 1, 2015.

BACKGROUND: Many believe single sales factor apportionment encourages investment and job creation by rewarding companies that increase their share of property and payroll in the State, and by exporting the tax burden to out-of-state companies that use the state as a market rather than as a location for their jobs, investment, and production activity. Others believe single sales factor apportionment arbitrarily picks winners and losers. For multistate companies whose North Carolina share of company sales is more than their North Carolina share of company property and payroll, single sales factor apportionment will increase their North Carolina income and franchise tax liability.

PART XVII. EFFECTIVE DATE

Except as otherwise provided, this act would become effective when it becomes law.

[18] NC began using a double-weighted sales factor in 1989 as an economic incentive to attract a Nabisco plant to the State. The plant did not locate in the State.

[19] Building contractors, securities deal, loan company, corporation receiving more than 50% of ordinary income from intangible property.

[20] A company with $1 billion in investment.

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2013

FISCAL ANALYSIS MEMORANDUM

[This confidential fiscal memorandum is a fiscal analysis of a draft bill, amendment, committee substitute, or conference committee report that has not been formally introduced or adopted on the chamber floor or in committee. This is not an official fiscal note. If upon introduction of the bill you determine that a formal fiscal note is needed, please make a fiscal note request to the Fiscal Research Division, and one will be provided under the rules of the House and the Senate.]

DATE: May 13, 2014
TO: Revenue Laws Committee
FROM: Sandra Johnson and Jonathan Tart, Fiscal Research Division
RE: Omnibus Tax Law Changes

FISCAL IMPACT
($ in millions)

☑ Yes ☐ No ☐ No Estimate Available

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
State Impact					
Corporate Income Tax					
Sales factor		(10.2)	(23.4)	(28.4)	(29.2)
State net loss	0.0	0.0	(5.0)	(5.0)	(5.0)
Tobacco Tax					
Vapor products		1.7	5.0	5.2	5.3
Sales Tax					
Modular and manufactured homes		(6.1)	(6.3)	(6.4)	(6.6)
Prepaid meal plans					
Newspapers	Minimal Fiscal Impact; Gain Less than $50K				
Retailer contractors	Negative Fiscal Impact, General Fund Impact Unknown				
NET STATE IMPACT	**$0.0**	**($14.6)**	**($29.7)**	**($34.6)**	**($35.5)**
Local Impact					
Fair & Flat Tax	Annual reduction of less than $500K in revenue for counties and $11.4-$24.6M in annual loss of funds for cities				
Sales Tax Changes					
NET LOCAL IMPACT		**$0.0**	**$0.0**	**$0.0**	**$0.0**

PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: North Carolina Department of Revenue

EFFECTIVE DATE Varies

TECHNICAL CONSIDERATIONS: None
None

BILL SUMMARY:

Corporate Income Tax

State Net Loss

The proposal would replace the net economic loss calculation with a State net loss calculation. The primary difference is that there would not be a reduction to losses for non-taxed income.

The current carryforward period of 15 years to utilize a loss for corporate income tax purposes is not changed by this proposal. The proposal is effective January 1, 2015.

Sales Factor

Under current corporate tax law, most multistate corporations calculate an apportionment percentage that is based on the percentage of property, payroll, and sales in the State. Specifically, the calculation is done by adding the property factor + payroll factor + two times the sales factor and dividing the sum by four. The corporation multiplies its income by that percentage to determine the amount of income subject to tax. The corporate franchise tax base is also apportioned based on this percentage.

The proposal increases the weight of the sales factor in the general apportionment calculation from two times to four times effective with the 2015 tax year. The proposed calculation would be done by adding the property factor + payroll factor + four times the sales factor and dividing the sum by six.

Tobacco Tax

The proposal applies an excise tax to vapor products. The bill modifies G.S. 105-113 creating a definition for vapor products and imposing an excise tax of 5¢ per milliliter of the consumable portion of vapor products. Vapor products are defined as noncombustible products that use a heating element to produce vapor from nicotine in a solution. The consumable product is the part of the vapor product that contains the nicotine liquid solution. This tax is effective February 1, 2015.

Sales Tax

The Tax Simplification and Rate Reduction Act, S.L. 2013-316, increased the rate on modular homes and manufactured homes from 2.5 percent and 2 percent or a$300 cap to the State sales and use tax rate of 4.75 percent. This change generated $10.2 million per fiscal year. The Revenue Laws proposal reduces the amount of sales tax that a retailer pays on modular and manufactured homes. Under current law, the retailer remits a sales tax equal to 4.75 percent of the retail price. The proposal modifies the modular and manufacture home sales tax base allowing the retailer to remit a State sales tax, 4.75 percent, on the wholesale price. This sales tax change becomes effective July 1, 2014.

Privilege License Tax

This bill proposes to repeal city and county privilege license taxes (PLTs) replacing PLTs with a flat $100 per business tax applicable at the municipal level. Effective July 1, 2015.

ASSUMPTIONS AND METHODOLOGY:

Corporate Income Tax

State Net Loss

The estimate for the State net loss provision is based on information from the Department of Revenue regarding audit experience and contested cases resulting from the separate calculation required for North Carolina purposes.

Fiscal impact resulting from the adoption of the federal calculation is not expected to be significant. This is because differences between the state and federal calculation have been reduced due to policy changes that have occurred. Additionally, when a loss is reduced for North Carolina purposes in a carryforward year, a taxpayer has the opportunity to use the loss in a subsequent tax year until the 15-year carryforward period expires. This results in deferral of a loss, not elimination of a loss. Although the fiscal impact is not expected to be significant, Fiscal Research has taken a conservative approach to account for potential impact due to conformity to the federal calculation and to account for timing differences.

Sales Factor

The estimate for increasing the sales factor weight in corporate apportionment formula is based on an analysis of corporate tax return data. The fiscal impact was calculated based on the change in franchise and income tax liability that would have occurred had corporations used four times the sales factor in the formula instead of twice the sales factor. The result was adjusted to account for the 5% corporate tax rate in effect starting in 2015. Timing adjustments were made to adjust for the difference in the calendar year and the State's fiscal year.

Sales Tax

The fiscal impact of modifying the modular and mobile home sales tax reduces General Fund availability by $6.0 million per fiscal year. This portion of the bill becomes effective July 1, 2014. Table 1, provides more information on the methodology used to calculate the fiscal impact of the proposed changes.

Table 1. Fiscal Impact of Modular Home/Mobile Home Sales Tax Modification, FY 2013-14

	Manufactured Home Sales Tax Base	Modular Home Sales Tax Base	Sales Tax Collections (4.75%)
Current Law	$ 261.8	$ 133.3	$ 18.8
Revenue Laws	$ 196.4	$ 80.0	$ 13.1
Fiscal Impact			**$ (5.64)**
Assumed Retail Markup	25%	40%	
Sources: Reference for Business, Operators of Mobile Home Sites[1]			

[1] Source: http://www.referenceforbusiness.com/industries/Finance-Insurance-Real-Estate/Operators-Residential-Mobile-Home-Sites.html

The legislation makes two sales tax changes, with an unknown or minimal fiscal impact. Removing the sales tax exemption for newspapers sold through vending machines is expected to be positive gain for the General Fund, but the estimate fiscal impact is minimal (less than $50,000). The fiscal impact of modifying the sales tax base for retailer-contractors is expected to be negative, but the magnitude of the impact is unknown.

Vapor Products

Based on industry information, Fiscal Research estimates that the nickel per milliliter tax on vapor products will generate $5.1 million per fiscal year. A similar proposal in South Carolina was estimated to generate $2.5 million per fiscal year.

According to Nielson data, the e-cigarette industry grossed $1.8 billion in 2013. Roughly 45 percent of e-cigarette sales occur online, with the remainder occurring through traditional channels such as convenience stores. Lorillard's vapor product, Blu, is an industry leader representing 45 percent of all e-cigarette convenience store purchases. Despite the decline/leveling off of traditional tobacco products, the e-cigarette sector is expected to continue to grow with refillable cartridges playing a key role.

Effective February 1, 2015, the fiscal estimate assumes that between 2.9 percent and 3.4 percent of all e-liquid product sales occur in North Carolina, and that three billion milliliters of e-juice are sold nationally. Apportioning this amount to NC, between 87 million and 102 million milliliters of e-juice is sold in the state annually. A nickel per milliliter excise tax on e-juice would generate between $4.4 million and $5.2 million in General Fund Revenue per fiscal year.

Privilege License Tax

Effective July 1, 2015, enacting this bill would result in an $11.4 million to $24.6 million loss for municipalities. The estimated loss to counties is less than $500,000 per fiscal year. To estimate the fiscal impact of replacing the current privilege license tax (PLT) system with a $100 per business, per location tax, Fiscal Research utilized business information from the North Carolina League of Municipalities and the U.S. Census County Business Patterns database, alongside population information from the North Carolina Department of Revenue.

The estimated lower bound losses of $11.4 million assume that all cities levy the maximum $100 per business on all businesses available. The estimated upper bound loss of $24.6 million assumes that cities either reduce their privilege license tax collections (based on the $100 per business tax) or hold their current privilege license tax collections constant, choosing the lesser of the two options.

SOURCES OF DATA:

North Carolina Department of Revenue

North Carolina League of Municipalities: The League of Municipalities surveyed its members in 2013 on the number businesses currently paying a privilege license tax. Members responded to the survey, reporting the number of companies reflected in the 2009-10 fiscal year PLT collections. Of

the 310 cities that levied a PLT tax in FY 09-10, the League received information on the number of businesses taxed from 120 cities.

U.S. Census County Business Patterns database: NS1100A2: 2011 Nonemployer Statistics: Geographic Area Series: Nonemployer Statistics for the US, States, Metropolitan Areas, and Counties: 2011; CB1100A11: 2011 County Business Patterns: Geography Area Series: County Business Patterns

Minnesota Department of Revenue

South Carolina Board of Equalization

Nicotine and Science Policy, "New Estimates Double Size of US E-cigarette Market; Increasing Importance of Refillable and Modified Devices." Available at: http://nicotinepolicy.net/gerry-stimson/1317-wells-fargo-march-2014

TECHNICAL CONSIDERATIONS: None

Bill Draft 2013-SVxz-22A: Part I - Deduction for State Net Loss

2013-2014 General Assembly

Committee:		**Date:**	May 13, 2014
Introduced by:		**Prepared by:**	Trina Griffin
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: Part I of the Omnibus Tax Law Changes bill would replace the corporate net economic loss deduction with a State net loss deduction for taxable years beginning on or after January 1, 2015.

CURRENT LAW: Both federal and State tax law provide relief to a corporation that incurs more expenses than revenues during the taxable period. For federal tax purposes, a corporation is allowed a net operating loss deduction equal to the amount by which tax deductible expenses are more than taxable revenues. The federal deduction may be carried back two years preceding the loss year, thus providing immediate tax relief in the form of a tax credit; any unused portion of the deduction may be carried forward for 20 years. For State tax purposes, a corporation is allowed a net economic loss deduction[1] equal to the amount by which allowable deductions for the year other than prior year losses exceed income from all sources in the year, including nontaxable income.[2] The State deduction may be carried forward 15 years; any loss carryforward must first be offset by nontaxable income, including allowable deductions.

BILL ANALYSIS: This Part does three things to simplify the calculation and ease the administration of the corporate loss deduction, effective for taxable years beginning on or after January 1, 2015:

- It replaces the net economic loss calculation with a State net loss calculation that is more comparable to the federal net operating loss calculation.
- It removes the requirement that a net economic loss carried forward to taxable years beginning on or after January 1, 2015, be first offset by nontaxable income.
- It instructs the Secretary of Revenue to apply the standards under sections 381 and 382 of the Code when determining to what extent a loss survives a merger or an acquisition.

[1] NC is the only state with a net economic loss deduction that differs significantly from the federal net operating loss deduction. Other states that have a corporate income tax loss deduction use a calculation that is comparable to the federal net operating loss deduction.

[2] Nontaxable income includes income that has been deducted in computing State net income, nonapportionable income that has been allocated directly to another state under G.S. 105-130.4, and any other income that is not taxable under State law. Prior to August 17, 2013, the Department of Revenue interpreted G.S. 105-130.8 to require items deductible under G.S. 105-130.5, such as U.S. government interest and dividends, to be considered in the computation of the loss in the year of creation as nontaxable income. The Department revised its interpretation to recognize that an allowable deduction, although not taxable, may not reduce a loss in the year the loss is created. However, pursuant to G.S. 105-130.8(a)(3), the Department continued to require that a loss carried forward to a subsequent year must first be offset by any income not taxable, including allowable deductions under G.S. 105-130.5.

The Part would replace the State's net economic loss deduction with a State net loss deduction. The State net loss would be the amount by which allowable deductions for the year, other than prior year losses, exceed gross income under the Code for the year adjusted as provided in G.S. 105-130.5. Adjustments under G.S. 105-130.5 include items such as the adjustments taxpayers must make when the State decouples from federal accelerated depreciation and expensing. If the taxpayer is a multi-state corporation with business within and without North Carolina, then the loss must be allocated and apportioned in the year of the loss in accordance with G.S. 105-130.4.

The repeal of the net economic loss deduction removes the applicability of North Carolina case law that governs the extent to which a net economic loss survives in a merger or an acquisition. The draft instructs the Secretary of Revenue to apply the federal regulations adopted under sections 381 and 382 of the Code in determining the extent to which a loss survives in a merger or acquisition. Although the provisions of the Code would be applied, the loss limitations may differ at the State level based upon the single entity reporting requirement in North Carolina and subject to the allocation and apportionment provisions of G.S. 105-130.4 in the year of the loss.

The Part changes the calculation of a net economic loss carry-forward. Under current law, the carry-forward must be reduced by nontaxable income. What constitutes nontaxable income has been a source of questions, disagreements, and litigation. Under the change made by this Part, the amount of the net economic loss, as determined on December 31, 2014, becomes a static amount. Any unused portion of a net economic loss carried forward in taxable years beginning on or after January 1, 2015, would be administered in accordance with the State net loss statute:

- Any unused portion of a net economic loss would not have to first be offset by nontaxable income.
- The standards under sections 381 and 382 of the Code would be applied in determining the extent to which a net economic loss survives a merger or acquisition that occurs on or after January 1, 2015.

EFFECTIVE DATE: This Part becomes effective for taxable years beginning on or after January 1, 2015.

Bill Draft 2013-SVxz-22A: Part II - Other Income Tax Changes

2013-2014 General Assembly

Committee:		**Date:**	May 13, 2014
Introduced by:		**Prepared by:**	Trina Griffin
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: Part II makes technical and clarifying changes to various income tax laws.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE: This Part makes the following technical and clarifying changes to the income tax laws.

Section 179 expense deduction

Section 2.1 makes two changes to the section 179 expense deduction for State income tax purposes to reflect the intent of legislative action taken in 2013. These changes need to be enacted as soon as possible since the changes impact 2013 tax returns. Many taxpayers have filed extensions, waiting for these provisions to be enacted.

First, it corrects the dollar amount of the section 179 expense investment limit. In the American Taxpayer Relief Act of 2013, Congress extended the $500,000/$2,000,000 accelerated section 179 expense deduction allowances for 2013 and 2014. The intent of S.L. 2013-10 was to decouple from this federal provision and return to the limits that would have been applicable under the Code as written in December 2010. The act erroneously referred to the Code as defined in May 2010. The Code was amended three times in 2010, and the changes included three different section 179 expense limits. S.L. 2013-414 rewrote the statutes that decouple from the federal accelerated depreciation expensing to make them clearer to understand. As part of the rewrite, the subsection decoupling from the section 179 expense limits sets forth the limits as opposed to referring to the Code on a certain date. In setting forth the limits, the dollar amount of the investment limit should have been $200,000 rather than $125,000.

Second, it makes changes to ensure that qualifying taxpayers may receive the benefit of the add-back deductions. Beginning in 2002, Congress has allowed taxpayers to depreciate certain assets more quickly than would otherwise be allowed – 100% bonus depreciation and section 179 expense deductions. Many states, including North Carolina, have decoupled from those provisions primarily because the fiscal impact of conforming to the greater depreciation rules would have been too costly. Instead of granting the larger depreciation in the initial years, North Carolina required taxpayers to add-back 85% of the deduction in the first year and to deduct 20% of this amount over the next five years. Taxpayers who changed their form of business entity or who merged with subsidiaries within the five-year period of deductions were not allowed to take the remaining deductions because the taxable entity that made the add-back and received the initial deductions either no longer existed or no longer owned the depreciable asset. The result in some cases was that the asset did not receive the full benefit of the deduction. S.L. 2013-414

changed the law to allow the transferee of an asset, where the tax basis of the transferred asset carried over from the transferor to the transferee for federal income tax purposes, to add any remaining deductions to the basis of the transferred asset and to depreciate the adjusted basis over the remaining life of the asset. For transactions that occurred prior to January 1, 2013, the law provided an election whereby the transferee could make the basis adjustment for any deductions foregone by the transferor. However, this allowance does not help a taxpayer who had disposed of the asset or whose asset had no remaining useful life. This section remedies this situation by allowing a taxpayer to deduct the remaining bonus depreciation on the 2013 tax return.

Personal income tax deductions

Section 2.2 does the following two things.

First, it clarifies that a person who is not eligible for a federal standard deduction is not eligible for a State standard deduction. North Carolina follows the federal law concerning an individual's eligibility for a standard deduction. The tax reform legislation inadvertently failed to follow this practice. Under federal law, the following individuals are not eligible for a standard deduction:

- A married individual filing a separate return where either spouse itemizes deductions.
- A nonresident alien individual. A resident alien is a person who meets either the "green card test" or the "substantial presence test".
- An individual making a return for a period of less than 12 months on account of a change in the person's annual accounting period.
- An estate or trust, common trust fund, or partnership.

Second, it clarifies the application of the $20,000 deduction for mortgage interest expenses paid and property taxes paid on real estate. S.L. 2013-316 limited the federally allowed itemized deductions for mortgage interest expenses paid and property taxes paid on real estate at $20,000. The intent of the legislation was for the $20,000 cap to apply to the cumulative deduction for a married couple, regardless of how the couple files a return. At the request of the Department of Revenue, this section clarifies this intent.

This section is effective for taxable years beginning on or after January 1, 2014.

Income tax rate applicable to estates

Section 2.3 updates the statutory references in G.S. 105 160.2 which imposes income tax on estates and trusts. Estates and trusts generally receive the same modifications to taxable income and tax rates as single individuals. House Bill 998, S.L. 2013 316, moved the statutes allowing modifications to North Carolina taxable income and setting the tax rate.

This section is effective for taxable years beginning on or after January 1, 2014.

Bill Draft 2013-SVxz-22A: Part III - Agricultural Exemption Certificate

2013-2014 General Assembly

Committee:		**Date:**	May 14, 2014
Introduced by:		**Prepared by:**	Cindy Avrette
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: Part III of the Omnibus Tax Law Changes bill gives guidance to the farming community and the Department of Revenue as to the administration of the income threshold a person must meet to qualify for a sales tax agricultural exemption certificate. It also allows a three-year income averaging to address issues of income volatility in farming operations.

CURRENT LAW: In S.L. 2013-316, the General Assembly imposed an income threshold a person must meet to qualify for a sales tax agricultural exemption certificate. Effective July 1, 2014, a person does not qualify for an agricultural exemption certificate unless the person has an annual gross income for the preceding taxable year[1] of at least $10,000 from farming operations. For federal income tax purposes, gross income from farming includes sales of agricultural products, cooperative distributions, agricultural program payments, and crop insurance and federal disaster payments. It appears five other states impose an income requirement to qualify for a sales tax agricultural exemption: Connecticut, Georgia, Rhode Island, Tennessee, and Washington. The income limit in these states varies from $1,000 in Tennessee to $10,000 in Washington. Four of those states have conditional exemption certificates for new farmers.

An agricultural exemption certificate allows a person to purchase the following items for farming operations without paying sales tax on those items: fuel; electricity; commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, baler twine, and seeds; farm machinery; attachments and repair parts for farm machinery; containers used in farm production, packaging, and transporting; grain, feed, or soybean storage facilities; substances for use on animals and plants, such as vaccines, insecticides, defoliants, and plant growth regulators; baby chicks; facilities used for housing, raising, or feeding animals; and bulk tobacco barns and parts and accessories for those barns.

A person who qualifies for an exemption certificate must apply to the Department. A certificate is valid until it is cancelled or revoked. An exemption certificate authorizes the retailer to sell an item to the holder and either collect tax at a preferential rate or not collect tax on the sale, as appropriate. A retailer does not need to obtain a certificate for each purchase if the retailer has a blanket certificate from a purchaser with which the retailer has a recurring business relationship. A person who purchases an item with a certificate is liable for any tax due on the sale if the Department determines the person is not eligible for the certificate. The statute does not place an

[1] The statute currently says "calendar year". The Department has requested that the term be changed to "taxable year". The bill draft makes this change.

affirmative duty on the holder of a certificate to notify the Department if the person no longer qualifies for it.

BILL ANALYSIS: Part III of the bill answers questions the farming community has posed concerning the implementation of the gross income requirements:

- Administration. – The bill clearly states that a person may not use an agricultural exemption certificate after July 1, 2014, unless the person meets the income requirements and that a person who no longer qualifies for the certificate is liable for any tax due. A qualifying farmer must apply to the Department for a new exemption certificate. A retailer may continue to rely upon a blanket certificate until October 1, 2014.
- Application for Certificate. – Neither the law enacted last year nor this bill changes the current administration of exemption certificates. However, the bill does impose an affirmative duty on a person who has an exemption certificate to notify the Department whenever the person no longer qualifies for it and to give notice to any seller that may rely on it. The affirmative duty applies to all holders of a certificate, not just farmers. This affirmative duty is similar to the one imposed on taxpayers who no longer qualify for preferential property tax treatment. The farming community is familiar with this requirement as part of the present use value property tax exemption program.
- Liability for Tax Due. – The bill affirmatively states that anyone who purchases an item under an exemption certificate is liable for the tax due on the purchase if the Department determines that the person is not eligible for the certificate or that the item purchased does not qualify for exemption under the certificate.
- Income Volatility. – The bill makes a substantive change to the income threshold at the request of the farming community to address volatility in farming income and to prevent a person from moving into and out of the exemption annually. To obtain a certificate, a person must have $10,000 of gross income from farming operations during the preceding taxable year or an average of $10,000 of gross income from farming operations for the three preceding taxable years. A farmer no longer qualifies for the exemption certificate when the farmer fails to meet the income threshold for three consecutive years. The Farm Bureau expressed concerns for certain types of farming operations that may not produce income on an annual basis, such as cattle breeders and timber operations.

EFFECTIVE DATE: The bill would become effective July 1, 2014, and apply to purchases made on or after that date.

BACKGROUND: There are currently 49,437 agricultural exemption certificates outstanding. Last year the Department issued 2,185 new certificates and it issued 2,253 certificates in 2012. Here are some statistics from the 2012 USDA Census of Agriculture:

	2012	2007
Total NC Farms	50,218	52,913
NC Farms < $10,000 in sales	31,492	34,276
NC Farms > $10,000 in sales	18,726	18,637
NC Farms < $10,000 in sales & government payments	30,960	33,741
NC Farms > $10,000 in sales & government payments	19,258	19,172

Bill Draft 2013-SVxz-22A: Part IV - Prepaid Meal Plans

2013-2014 General Assembly

Committee:		**Date:**	May 14, 2014
Introduced by:		**Prepared by:**	Cindy Avrette
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: Part IV of the Omnibus Tax Law Changes bill addresses sales tax issues related to the repeal of the sales tax exemption for meals served to students in dining rooms of regularly operated educational institutions.

CURRENT LAW: S.L. 2013-316 repealed the exemption for meals served to students in dining rooms of regularly operated by educational institutions, effective January 1, 2014. In practice, meals are not always sold directly. Today, educational institutions sell a variety of meal plans that offer choices between a specific number of "meal swipes" and "food dollars". The meal swipes are part of a prepaid meal plan that entitles the student to a predetermined number of meals. The cost applies regardless of whether or not the student consumes the meals. The food dollars are part of a declining card balance, much like a debit card, that may be used in on-campus facilities for a variety of purchases as well as with participating privately-owned facilities. The meal swipes are problematic to tax on a transactional basis because the gross receipts paid for the meal swipes applies regardless of whether or not the meals are consumed. In practice, few institutions operate their dining halls; instead, they contract with third party vendors to prepare the meals and operate the dining halls.

BILL ANALYSIS: Part IV of the bill addresses questions and administrative issues taxpayers and the Department of Revenue have encountered with the taxation of food and prepared food sold to students in colleges and universities.

Subsection	Explanation
(a)	Defines a prepaid meal plan to be a plan offered by an institution of higher education that entitled a person to food or prepared food, that is billed or paid for in advance, and that provides for predetermined units or unlimited access to food or prepared food but does not include a dollar value that declines with use. The definition limits the applicability to those transactions that benefited from the sales tax exemption repealed in S.L. 2013-316. It does not apply to the part of a meal plan that is based on a declining card balance, such as the food dollars, because those transactions are taxed at the time they are made. By applying the tax to the gross receipts derived from the plan, it is clear that that the tax is based upon the amount paid for the plan and not upon the use of the plan.

(b)	Imposes a sales tax at the general rate upon the sales price of or gross receipts derived from a prepaid paid meal plan. The local sales tax also applies to an item taxed by the State at the general sales tax rate.
(c)	Sources the local sales tax revenue to the county where the school is located.
(d)	Addresses how to tax a transaction where one amount is paid for a taxable item (prepaid meal plan; meals) and a nontaxable item (declining card balance; tuition; room). In that instance, tax applies to the allocated price of the prepaid meal plan. The tax applies to items purchased with a dollar value that declines with use as the dollar value is used. Tuition and room are not subject to sales tax.
(e)	This subsection does two different things: Clarifies that the remaining sales tax exemption for meals sold in elementary and secondary schools applies to any school regulated under Chapter 115C. Public K-12 schools, private K-12 schools, regional schools, and home schools are regulated under Chapter 115C. Residential schools are regulated elsewhere.[1] The bill removes the words "not for profit" because meals provided to K-12 students take many forms. This change ensures that the tax treatment for meals sold in elementary and secondary schools remains unchanged until the General Assembly makes a policy choice to tax them differently. Exempts food and prepared food used to prepare a meal for consumption under a prepaid meal plan from sales tax because this transaction is analogous to a sale for resale.
(f)	Provides schools with an option for reporting and remitting sale tax revenue derived from a prepaid meal plan to the State. The option allows the institution to contract with the food service contractor to be liable for the collection and remittance of the tax. At least one university has a contract with its food service contractor to remit the tax to the State on behalf of the university. The university remains the retailer under the sales tax laws because it is the person making, offering, and soliciting the sale of the prepaid meal plan. The tax will apply to the gross receipts the university derives from the prepaid meal plan; this amount includes the amount charged the university by the food service contractor and any other expenses included by the university in the price it charges for the prepaid meal plan. Under this option, the retailer (institution) would send the tax receipts collected to the food service contractor and the food service contractor would send the receipts, along with other tax receipts, to the Department of Revenue.

EFFECTIVE DATE: This act is effective when it becomes law and applies to gross receipts derived on or after that date. Colleges and universities will begin billing for the fall semester in July, and payments will be received primarily during the months of July and August.

[1] The School of Math and Science and the School of the Arts are part of the UNC system.

Bill Draft 2013-SVxz-22A: Part V - Admissions

2013-2014 General Assembly

Committee:		**Date:**	May 14, 2014
Introduced by:		**Prepared by:**	Cindy Avrette
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: ***Part V of the Omnibus Tax Changes bill draft addresses sales tax issues associated with the expansion of the sales tax base to include gross receipts derived from admissions to a live event, a movie, and other attractions for which an admission is charged.***

CURRENT LAW: S.L. 2013-316 changed the taxation of live events and movies from a 3% gross receipts privilege tax to a State and local sales tax. The two taxes differ in that the gross receipts tax was imposed upon the person engaged in providing the event; it was not designed to be passed directly onto the consumer. The sales tax is imposed upon the retailer, but it is intended to be passed onto the purchaser and borne by the purchaser instead of the retailer.[2] The payment of the tax is considered a debt from the purchaser to the retailer until it is paid. A retailer is considered to act as a trustee on behalf of the State when it collects tax from the purchaser. The tax should be stated and charged separately unless the retailer displays a statement indicating the sales price includes the tax.

The gross receipts tax was payable monthly and the return covered the gross receipts received during the previous month.[3] The sales tax is due quarterly, monthly, or bi-monthly depending upon the tax liability of the retailer.[4] The administration of the sales tax is more defined to ensure uniform tax treatment. North Carolina is also a member state in the Streamlined Sales Tax Agreement. One of the purposes of this Agreement is to ensure uniformity among the participating states so the tax may be more efficiently administered by retailers who conduct business in more than one state.

BILL ANALYSIS: This Part makes the following changes to the laws applicable to sales tax on the gross receipts derived from an admission charge:

[2] G.S. 105-164.7.
[3] By practice, some taxpayers remitted the gross receipts tax at the time the event occurred.
[4] G.S. 105-164.16.

Subsection	Explanation
(a)	Clarifies that for purposes of the imposition of sales tax, the term "gross receipts" has the same meaning as the term "sales price". "Sales price" is defined to be the total amount or consideration for which tangible personal property, digital property, or services are sold, leased, or rented. This subsection also removes the details concerning how amusements are taxed and moves those provisions to a new statute in subsection (c) of this section. The imposition of the tax itself remains in G.S. 105-164.4.
(b)	Sources the local sales tax revenue derived from admission charges to the location where admission to the entertainment activity may be gained. When the location where admission may be gained is not known at the time of the transaction, the general sourcing principles of G.S. 105-164.4B(a) apply: the business location where the product is received; the location where the product is received; the location indicated by the address of the purchaser.
(c)	Creates a new statute to address the taxation of admission charges: • It defines an "admission charge" as the gross receipts derived for the right to attend an entertainment activity. An entertainment activity is defined as a live performance, a movie, a museum or similar attraction and a guided tour of that attraction. The bill does not expand the definition the types of entertainment subject to the tax. The policy decision of what types of entertainment to include in the sales tax base was made in S.L. 2013-316. It defines an "amenity" as a feature that increase the value of an entertainment activity by giving the person access to items that are not subject to sales tax and that are not available with purchase of admission to the event without the feature. Lastly, it defines a facilitator. The law enacted last session did not define "admission charge" or "amenity". A definition of "facilitator" is needed to accomplish the administration of the tax as provided in this subsection. • It provides that a retailer is the operator of the venue where the entertainment activity occurs. In practice, admission to an entertainment event may often be obtained at multiple places from multiple people. To accommodate this business practice, the bill does the following: o Provides that a person who provides the entertainment and received admission charges directly from purchaser is a retailer. This provision would allow a person, such as the symphony, that leases space to perform to be a retailer. In this example, the venue would also be a retailer if the venue also sells admission to the symphony event. o Provides the operator of the venue and a facilitator may have a contractual agreement for dual reporting. Dual remittance will allow the operator of the venue to remit the tax on the admission charge and the facilitator to remit the tax on any other charges the facilitator

	imposed that were necessary for the purchaser to pay to complete the transaction. • It defines a facilitator as a person who accepts payment of an admission charge to an entertainment activity and is not the operator of the venue where the entertainment activity occurs. It requires the facilitator to report to the retailer the admission charge a person pays to the facilitator and to send to the operator the tax due on the gross receipts derived from an admission charge no later than 10 days after the end of each calendar month. A facilitator that does not send this amount to the retailer is liable for the tax due. These requirements are considered terms of the contract between the retailer and the facilitator. These provisions are the same as the provisions applicable to facilitators who accept payment from a consumer for accommodations. • It clarifies what transactions are not subject to the tax: o Amounts paid to participate in sporting events. o Tuition, registration, or any other charge to attend an instructional or educational seminar, workshop, or conference. o A political contribution. o A charge for lifetime seat rights, leases, or rental of a suite or box, provided the charge is separately stated. o An amount paid solely for transportation. • It clarifies the following exemptions from the tax: o The portion of a membership charge that is deductible as a charitable contribution under federal income tax laws. o A donation that is deductible as a charitable contribution under federal income tax laws. o Charges for an amenity. • It changes the events that are exempt from the tax to the following: o An event sponsored by an elementary or secondary school. o An event sponsored by a nonprofit that is exempt from income tax if all of the following conditions are met: the entire proceeds of the event are used exclusively for the entity's nonprofit purpose; the entity does not compensate members or individuals; the entity does not compensate any person for participating in the event, performing in the event, placing in the event, or producing the event. • It repeals the following exemptions, thus subjecting the gross receipts derived from an admission charge to that event to sales tax, effective January 1, 2015: o An agricultural fair.

	o Up to two activities a year sponsored by a nonprofit.[5] o A State attraction.
(d)	Makes a conforming change to the exemption statute. This subsection becomes effective January 1, 2015.
(e)	Clarifies that long-standing exemptions applicable to tangible personal property sold by nonprofit entities do not apply to gross receipts derived from an admission charge to an entertainment activity.
(f)	Provides that the gross receipts derived from admission to a live event purchased on or after January 1, 2015, will be taxable under the sales tax statutes, regardless of the date of the initial sale of tickets. S.L. 2013-315 provided a transitional period. Under S.L. 2013-316, the gross receipts for a live event where the initial sale of admission occurred on or before January 1, 2014, are taxable under the old 3% gross receipts privilege tax statutes.

EFFECTIVE DATE: Except as otherwise stated in the summary, the bill draft would become effective January 1, 2015.

[5] A subcommittee of the Revenue Laws Study Committee recommended that similar events be taxed similarly, regardless of the entity providing the event. This policy decision led to the repeal of these exemptions. The subcommittee also found that the exemptions caused confusion re: what was a State attraction and what two events could be exempt. This confusion should be eliminated by the repeal of these exemptions.

Bill Draft 2013-SVxz-22A: Part VI - Service Contracts

2013-2014 General Assembly

Committee:		**Date:**	May 14, 2014
Introduced by:		**Prepared by:**	Cindy Avrette
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: ***Part VI of the Omnibus Tax Law Changes bill addresses sales tax issues associated with the expansion of the sales tax base to include the sales price of a service contract.***

CURRENT LAW: S.L. 2013-316 expanded the sales tax base to include the sales price of a service contract. A service contract is defined as a warranty agreement, a maintenance agreement, a repair contract, or a similar agreement or contract by which the seller agrees to maintain or repair tangible personal property. The act exempted from the tax items exempt from sales tax, other than motor vehicles; network assets on utility owned lands and on right-of-ways or easements; and items purchased by a professional motorsports racing team for which the team may receive a sales tax refund. The act also exempted an item used to maintain or repair tangible personal property pursuant to a service contract if the purchaser of the contract is not charged for the item.

BILL ANALYSIS: This Part makes the following changes to the law applicable to the sales tax on service contracts:

Subsection	Explanation
(a)	Changes the definition of a service contract to alleviate confusion about who must provide the work under the service contract for the contract to be taxable. In practice, service contracts are often sold by a seller on behalf of the person obligated to provide the service. This subsection changes the definition of a service contract to be a contract where the obligor under the contract agrees to maintain or repair tangible personal property or a motor vehicle.
(b)	Clarifies in the sales tax imposition statute that the tax applies to the sales price of or the gross receipts derived from a service contract.
(c)	Creates a new statute to address the sales tax on service contracts: • It clarifies that the local sales tax revenue from a service contract are sourced in accordance with the general sourcing principles of G.S. 105-164.4B. • It defines a retailer as the obligor when the obligor sells the service contract to the purchaser at retail. If the service contract is sold to the purchaser by a

	facilitator, the facilitator is the retailer unless the facilitator and the obligor have a contractual agreement that the obligor will be liable for payment of the tax. In this instance, the facilitator must send the retailer the tax due on the sales price of or the gross receipts derived from the service contract within 10 days after the end of each calendar month. A facilitator that does not send the retailer the sales tax due is liable for the tax. A facilitator is defined as a person who contracts with an obligor to market the service contract and accept payment for the contract. These provisions are substantially the same as the provisions that apply to a facilitator who accepts payment of sales tax on accommodations. • It moves the exemptions from G.S. 105-164.13 and places them in the newly created statute. • It adds an exemption for items subject to tax under Article 5F, the 1% excise tax on mill machinery and other similar transactions. • It clarifies that the tax does not apply to service contract for items sold at retail that become part of real property unless the service contract is sold at the same time as the item of tangible personal property covered in the contract. The tax does not apply to security or similar monitoring contracts for real property or to a renewal of a service contract where the tangible personal property covered by the contract becomes part of or affixed to real property prior to the effective date of the renewal. • It requires a retailer to report the sales price of or gross receipts derived from a service contract on an accrual basis, so that the receipts are recognized when the transaction occurs rather than when payment is received. Some service contracts are financed over time. This provision clarifies that the sales tax is due at the time of the retail sale and not at the time of the periodic payments.
(d)	Creates a new statute for refunds of sales tax paid on a rescinded sale or a cancelled service. Historically, retailers have provided purchasers a refund of the sales tax paid on tangible personal property that is returned to the retailer for a refund. The retailer is allowed to reduce taxable receipts on the subsequent sales tax return by the taxable amount of the refund for the period in which the refund occurs or may request a refund of an overpayment of tax. This section codifies this current practice. The new statute creates a process to allow a purchaser of a service contract a refund of the sales tax paid. The process is different for a service contract because often the refund is provided by a person who was not the retailer that sold the service contract. This situation becomes more uncertain when the service contract is for a motor vehicle. Under the bill, if the purchaser receives a refund on any portion of the sales price of a service contract purchased from the retailer who collected the sales tax on the retail sale, then the general provisions applicable to rescinded sales apply. If the purchaser receives a refund from anyone else and the

	amount refunded does not include the sales tax paid on the refundable amount, then the purchaser may apply directly to the Department of Revenue for a refund. An application for a refund must be supported by documentation on the taxable amount of the service contract refunded to the purchaser and it must be filed within 30 days after the refund is received. A sales tax refund filed after the due date is barred.
(e)	Makes a conforming change.
(f)	Clarifies the exemption applicable to an item used to maintain or repair tangible personal property pursuant to a service contract. The exemption does not apply to an item used to maintain or repair mill machinery and other items taxable under Article 5F, since the service contract applicable to this tangible personal property is not subject to tax. The exemption does not apply to a tool, equipment, or similar item of tangible personal property used to complete the maintenance or repair unless the item becomes a component or repair part of the item for which the service contract is sold. For example, the exemption does not apply to the hammer and screwdriver used to do the work under a service contract.
(g)	Clarifies that the gross receipts derived from a service contract for a motor vehicle are not subject to the highway use tax.
(h)	Conforming change to the local sales tax statutes.

EFFECTIVE DATE: This Part becomes effective October 1, 2014.

Bill Draft 2013-SVxz-22A: Part VII - Retailer-Contractors

2013-2014 General Assembly

Committee:		**Date:**	May 13, 2014
Introduced by:		**Prepared by:**	Trina Griffin
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: This bill addresses the applicability of the sales tax laws to retailer-contractors, such as the major home improvement stores, when they are engaged in a performance contract rather than a retail sale. Specifically, a retailer-contractor would be considered the consumer of the items or materials they furnish and install or apply to real property to the extent the item becomes part of the real property. As the consumer of those items, the retailer-contractor would be responsible for payment of the tax rather than the customer. This bill would become effective January 1, 2015.

CURRENT LAW: Under current law, retailers are required to collect and remit sales tax on retail sales of tangible personal property. Under a performance contract, the contractor agrees to furnish the necessary materials, labor, and expertise to accomplish the job; it is not a contract for the sale of specific items. Contractors are deemed to be the consumers or end users of the tangible personal property they use in fulfilling performance contracts and are liable for the tax. However, when a customer purchases an item from a home improvement store and enters into a contract with the store for the installation of the item in their home, it is not always clear whether that transaction is a retail sale plus installation or a performance contract.

The statutes provide little guidance as to what the correct interpretation is. They do not define "contractor" or "performance contract" or speak to when the installation of tangible personal property constitutes a real property improvement. The definition of "sale" refers to when title or possession is transferred. When a contractor permanently affixes an item of tangible personal property to real estate, title and possession typically transfer upon installation. However, once the item is permanently affixed to real property, general principles of real estate law provide that the item is no longer tangible personal property but has transformed into a real property fixture. Therefore, when a homeowner obtains title or possession to the property, the property is real estate and, therefore, one could argue no retail sale of tangible personal property has occurred. Adding further confusion to the mix, North Carolina's definition of "retailer" includes the business of installing tangible personal property regardless of whether it is permanently affixed to real property. This definition suggests that all contractors are also retailers, which conflicts with other principles at play.

The Department has developed guidance on this issue through its technical bulletins, and the tax treatment is ultimately determined by looking at a number of factors, such as whether an item is sold with an installation agreement, the tenor of the agreement, if there is one, whether an item is pre-fabricated, whether an item is built on-site, and whether a specific quantity is stated in the

agreement. Determining the tax consequences involves a complex and fact-specific analysis. Over the years, the guidance has been inconsistent and, at the very least, confusing. For example, the sale and installation the same item, such as carpet, may have different tax treatment depending on who the seller is and how the transaction is structured. Also, transactions that seem to be similar in nature, such as the installation of countertops and cabinets, are treated differently as well.

For several years, the Department has sought clarification from the General Assembly on this issue. The Revenue Laws Study Committee first studied it in 2012, with no recommendation, and again in 2013 recommending this legislation.

BILL ANALYSIS: This bill provides that the general rate of tax applies to the sales price of tangible personal property sold to a real property contractor when that property is used by the contractor for the improvement, alteration, or repair of real property and the item becomes part of the real property. The bill defines the term "retailer-contractor" as an entity that can act either as a retailer or as a real property contractor. The sales tax provisions applicable to a real property contractor would apply to a retailer-contractor when it is acting as a real property contractor. Retailer-contractors may continue to make tax-exempt purchases of materials, as they do now, but would accrue and pay the tax once the items are withdrawn from inventory and used in the performance of a real estate improvement contract. If the retailer-contractor uses a subcontractor to perform the installation, then the subcontractor would pay the tax on any items the subcontractor purchases in fulfilling the contract. However, in accordance with existing use tax principles, the retailer-contractor and the subcontractor would be jointly and severally liable for the tax.

The second part of the proposal holds harmless retailers that have been following the law as interpreted by the Department, such as Home Depot, as well as retailers who have asserted that the Department's interpretation is inconsistent with existing statutes, such as Lowe's.

EFFECTIVE DATE: This bill would become effective January 1, 2015, and would apply to sales on or after that date and contracts entered into on or after that date.

BACKGROUND: This issue drew particular attention in 2009 when newspaper reports revealed a long-running dispute between Lowe's and the Department of Revenue on the application of the law in this area. The report indicated that Lowe's was not collecting sales tax when it sold and subsequently installed items such as cabinets, flooring, and countertops. The Department's position is that these transactions are retail sales plus installation and that Lowe's should be collecting sales tax on the purchases but not the installation charges as long as those charges are separately stated on the customer's invoice. Lowe's position is that these transactions are performance contracts and, therefore, they are only required to pay the use tax because they are the user or consumer of that property and that the cost is factored into the "contract price" ultimately paid by the customer, but it is not a separately stated cost.

Bill Draft 2013-SVxz-22A: Part VIII - Other Sales Tax Changes

2013-2014 General Assembly

Committee:		**Date:**	May 13, 2014
Introduced by:		**Prepared by:**	Trina Griffin
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: Part VIII makes various sales tax changes.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Section	Explanation and Effective Date
8.1	This section moves the substance of the law imposing the State sales tax on accommodations to a new statutory section for stylistic purposes. The only substantive change provides that a private residence or cottage rented for fewer than 15 days that is listed with a real estate broker or agent is subject to sales tax and occupancy tax. Beginning in 1984, the Department of Revenue interpreted the private residence exemption to apply only if the residence was not listed with a real estate agent. A 1988 memo by an Associate Attorney General supported this interpretation. In 2012, the Department changed its interpretation and issued an Important Notice indicating that the sales tax exemption applied to a private residence rented for fewer than 15 days regardless of whether it was listed with a real estate agent. The current law states that "*The tax does not apply to a private residence or cottage that is rented for fewer than 15 days in a calendar year...*", but it goes on to state that "*A person who, by written contract, agrees to be the rental agent for the provider of an accommodation is considered a retailer under this Article and is liable for the tax.*" The Department has requested that language be added to the statute that is consistent with its pre-2012 interpretation. This change would impact the application of occupancy tax as well because G.S. 155A-155 and 160A-215 provide that "*the room occupancy tax applies to the same gross receipts as the State sales tax on accommodations and is calculated in the same manner as that tax.*" This section would become effective June 1, 2014, and apply to private residences occupied as a transient accommodation on or after that date even if the accommodation was reserved or paid for prior to the effective date.
8.2	This section disallows a sales tax refund for sales tax paid on video programming and piped natural gas. Historically, the State sales tax refunds allowed to nonprofits and local governments has not applied to sales tax paid on utilities. Prior to 1995, when

	piped natural gas was subject to sales tax, piped natural gas was included in the list of utilities for which a sales tax refund was not allowed. Last session, when the General Assembly made the policy decision to return piped natural gas to the sales tax base, this conforming change was not considered or made. Likewise, when the General Assembly made the policy decision to begin taxing video programming as a utility, a conforming change to the refund statutes was not considered or made. This section treats utilities that are taxed by the State at the combined general rate the same. This section becomes effective July 1, 2014, and applies to purchases occurring on or after that date.
8.3	Subsection (a) repeals the sales tax exemption for sales from vending machines of one cent per sale. The provision is obsolete. S.L. 2013-316 removed the sales tax exemption applicable to newspapers sold by street vendors, newspaper carriers, and vending machines. The intent was to tax all newspapers at the State and local sales tax rate. However, G.S. 105-164.13(50) exempts 50% of the sales price of items sold through a coin-operated vending machine from sales tax. To maintain the intent of the 2013 tax law change, subsection (b) provides that the sales tax exemption applicable to 50% of the sales price of items sold through a vending machine does not apply to newspapers. The law currently excludes tobacco products sold through vending machines from this 50% exemption. This section becomes effective October 1, 2014, and applies to sales made on or after that date.
8.4	Effective January 1, 2014, S.L. 2013-316 increased the State sales tax rate on manufactured and modular homes. In response to industry concerns, this section imposes the tax on ½ of the price of the home by exempting 50% of the sales price from sales tax. The industry states that the average material cost in a factory-built home is approximately 50% of the invoice price. The intent of this section is to more closely tax manufactured and modular homes in a similar manner as stick-built homes. This section becomes effective July 1, 2014.

Bill Draft 2013-SVxz-22A*: Part IX - Excise Tax Changes

2013-2014 General Assembly

Committee:		**Date:**	May 14, 2014
Introduced by:		**Prepared by:**	Cindy Avrette
Analysis of:	2013-SVxz-22A*		Committee Counsel

SUMMARY: Part IX of the Omnibus Tax Law Changes bill makes various changes to the excise tax statutes, as requested by the Excise Tax Division of the Department of Revenue.

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Section	Explanation	Effective Date
9.1	Subsection (c) of this section applies to the excise tax on alcohol. It would allow a wholesaler or importer of malt beverages and wine to provide security to the Secretary in the form of a letter of credit as an alternative to a bond. This form of security is consistent with what is currently allowed under the excise tax statutes for motor fuels and tobacco products. This subsection also removes the option of a taxpayer providing security in the form of a bond based upon obligations of a governmental unit. This option has not been used in recent memory and is not a form of collateral allowed in other tax schedules. In the few instances where it has been used, the Department's experience has shown that the bonds are often rolled over into a personal CD when the bond matures rather than another governmental bond. Subsections (a) and (b) of this section modernize the statutes and clarify that the letter of credit must be issued by a bank acceptable to the Secretary and available to the State as a beneficiary.	When it becomes law
9.22	This section would allow a wholesale dealer or retail dealer of other tobacco products to provide the Department a manufacturer's tax affidavit in lieu of a notarized tax affidavit as supporting documentation for a tax refund. A dealer that has stale or unsalable tobacco products upon which the tax has been paid is allowed a refund of that amount. The majority of states allow a dealer to use manufacturer tax affidavits as supporting documentation. The allowance of a written certification from the manufacturer signed under perjury of law does not lessen the accountability of the taxpayer	

	and it expedites the administration of the refund. The change in the statute has been requested by taxpayers.[1]	
9.3	This section would amend the tax secrecy provisions as follows: • To allow the Department to furnish a data clearinghouse the information required to be released in accordance with the State's agreement under the December 2012 Term Sheet Settlement, as finalized by the State in the NPM Adjustment Settlement Agreement, concerning annual tobacco product sales by a nonparticipating manufacturer. • To allow the Department to share information with a person who provides a surety bond or irrevocable letter of credit on behalf of a taxpayer if the information is necessary for the Department to collect on the bond or letter of credit in the event the taxpayer does not comply with the tax laws.	When it becomes law
9.4	This section would allow the Secretary of Revenue to delegate the authority to hold hearings. Under administrative practice, this authority has been delegated to a staff attorney.	When it becomes law
9.5	This section clarifies that the tax on motor carriers applies to both intrastate motor carriers and to interstate motor carriers. It also updates the reference to the International Fuel Tax Agreement from June 1, 2010, to July 1, 2013. The update in the reference does not make any substantive changes to the tax laws concerning motor carriers.	When it becomes law
9.6 9.10	Section 9.6 clarifies that local sales tax is due on motor fuel for which a refund of the per gallon excise tax is allowed. Under current law, the State sales tax is deducted from any amount of excise tax refunded. This section clarifies that the local sales tax revenue is also deducted from any amount of excise tax refunded. Section 9.10 clarifies the amount of local sales tax to be deducted from a refund of excise tax paid.	When it becomes law
9.7	This section would tax all biodiesel fuel. B100 is not subject to federal excise tax, and as such is not subject to the State excise tax. B99.9 is subject to the State excise tax since it is a blended product. B100 is most commonly used as a motor fuel.	October 1, 2014

[1] U.S. Smokeless Tobacco Brands operates a secure website that allows distributors to access affidavits and credit memos for their returns. Each affidavit includes an accurate list of product eligible for return in a state along with an electronically signed statement.

9.8	This section would allow the Secretary to waive or reduce civil penalties imposed under the motor fuel tax statutes under the Department's penalty waiver policy used for other tax schedules. Under current law, a person assessed a civil penalty under the motor fuel tax laws must pay the penalty at the time it is assessed and file a request for a Departmental review of the penalty. Under the change proposed by this section, the penalty would not automatically be payable upon assessment and the administrative process for waiving or reducing it would be simpler and less time consuming. Although a taxpayer must go through the review process for the waiver or reduction of a penalty, the guidelines used to make the decision are the same guidelines currently applied through the penalty waiver policy.	When it becomes law
9.9	This section would clarify that a shipping document required by the vessel transporting motor fuel is intended to provide permanent information. Under current law, if the document is issued by a refiner or a terminal operator, the document must be machine printed. That requirement is not there for a tank wagon importer. A tank wagon importer is a person who imports motor fuel from a terminal or bulk plant in another state and transports the fuel only by means of a tank wagon. A tank wagon is a truck designed to carry at least 1,000 gallons of motor fuel but is not a transport truck. Motor fuel investigators have found shipping documents to be notes contained on a "grease board" or chalk board or other type of device that can be erased.	October 1, 2014
9.10	Removes obsolete references to the privilege tax.	

2013-2014 General Assembly

Bill Draft 2013-SVxz-22A: PART X - TAX LAW COMPLIANCE CHANGES

Committee:		**Date:**	May 13, 2014
Introduced by:		**Prepared by:**	Greg Roney
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: ***Part X of the bill draft would require filing all State tax returns and paying all State taxes to receive and hold an ABC permit. Part X of the bill draft also would authorize the Department of Revenue to use $500,000 (currently, $150,000) from the collection assistance fee account to contract for taxpayer locater services.***

CURRENT LAW: G.S. 18B-900 lists the following requirements to receive and hold an ABC permit:

- Be at least 21 years old (19 years old for managers selling only beer and wine).
- Be a NC resident unless the out-of-state person is not responsible for operations.
- Not have been convicted of a felony within 3 years or had citizenship restored.
- Not have been convicted of an alcoholic beverage offense within 2 years.
- Not have been convicted of a misdemeanor controlled substance offense within 2 years.
- Not have had an ABC permit revoked within 3 years except failures to pay registration fee.
- Not have an unsatisfied judgment for injury caused by sales to underage persons.

The requirements under G.S. 18B-900 apply to each of the following persons:

- Owner of a sole proprietorship.
- Managers for a corporation.
- Members of a general partnership.
- General partners in a limited partnership.
- Managers and any members with 25% interest in a limited liability company.
- Each officer, director, and owner of 25% of a corporation.

G.S. 18C-141 prohibits the Director of the North Carolina State Lottery Commission from recommending lottery game retailers to the Commission who are not current in filing all State tax returns and paying all State taxes.

G.S. 105-230 suspends the charter of any corporation or a limited liability company that fails to file any tax return or pay any tax. Any act performed or attempted to be performed during the period of suspension is invalid and of no effect unless the charter is reinstated after filing and paying all taxes.

G.S. 105-243.1 imposes a 20% collection assistance fee on overdue tax debts after 90 days.[1] The collection assistance fee is credited to a special account and must be applied to the costs of collecting overdue tax debts.

BILL ANALYSIS:

Part X – Section 10.1.(a): The bill draft would add a new requirement to G.S. 18B-900 that ABC permit applicants file and pay all State taxes. State taxes must be collectable and finally determined to be due for the tax to block an ABC application.

Procedurally, the ABC Commission will request the Department of Revenue check the State tax compliance status of persons. If the Department of Revenue reports to the ABC Commission that a person is not in State tax compliance, then the person cannot receive an ABC permit until the Department of Revenue reports to the ABC Commission that the person is in compliance. Taxpayers who enter into an installment payment agreement with the Department of Revenue are considered in compliance as long as the agreement is in force.

The requirement of State tax compliance operates like all ABC permit requirements under G.S. 18B-900 – applying to all persons listed in G.S. 18B-900(c) and applying continually to hold a permit. Four types of ABC permits may still be issued without State tax compliance: special occasion permit under G.S. 18B-1001(8), limited special occasion permit under G.S. 18B-1001(9), special one-time permit under G.S. 18B-1002, and salesman permit under G.S. 18B-1111.

Part X – Section 10.1.(b): The Administrative Procedure Act (Chapter 150B) does not apply to the ABC Commission's actions when determining State tax compliance and refusing to issue ABC permits.

Part X – Section 10.1.(c): The exchange of confidential taxpayer information between the Department of Revenue and the ABC Commission is authorized.

Part X – Section 10.1.(d): The bill draft authorizes the Department of Revenue to spend $500,000 annually on taxpayer locater services. The current authorization is $150,000. The source of the funds is the collection assistance fee imposed on overdue tax debts.

BACKGROUND:

Sections 10.1(a-c): The bill draft closely follows the statute (G.S. 18C-141) requiring lottery retailers to file and pay all State taxes. The ABC Commission and the NC Department of Revenue plan to check the State tax compliance of all new and renewing ABC permits starting May 1, 2015.

---

[1] The Department of Revenue may not mail the collection assistance fee notice earlier than 60 days after the tax debt becomes collectible under G.S. 105-241.22. A collection assistance fee is imposed on an overdue tax debt that remains unpaid 30 days or more after the fee notice is mailed to the taxpayer.

Section 10.1(d): The collection assistance fee provides funds to pay for the costs of collecting overdue tax debts which have included personnel at the Department of Revenue that collect taxes, locator services, and infrastructure projects at the Department of Revenue. When attempting to collect overdue taxes, the Department of Revenue uses locator services through contracts with private data services to identify current addresses for taxpayers.

EFFECTIVE DATE: Sections 10(a-c) of the bill draft requiring tax compliance for ABC permits would be effective May 1, 2015. Section 10.1(d) increasing funding for locator services is effective when it becomes law.

Bill Draft 2013-SVxz-22A: Part XI - Property Tax Changes

2013-2014 General Assembly

Committee:		**Date:**	May 13, 2014
Introduced by:		**Prepared by:**	Trina Griffin
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: ***Part XI provides for the central assessment of mobile telecommunications property.***

CURRENT LAW & ANALYSIS: Under current law, the property is locally assessed by each county. The valuation of this property has become increasingly complex due largely to the rapidly changing technology in the industry and to the frequent acquisitions and mergers of wireless carriers. Central assessment by the Department would simplify the listing process for the industry and ensure uniformity of assessment among the counties. The change is supported by the mobile telecommunications industry, the Department of Revenue, and local governments.

The central assessment would apply to all of the tangible personal property of a mobile telecommunications company and would also include the cellular towers owned by such companies as well as the cellular towers owned by "tower aggregators." Real property owned or leased by a mobile telecommunications company or tower aggregator would continue to be assessed locally in each county. This section would become effective for taxable years beginning on and after July 1, 2015.

Bill Draft 2013-SVxz-22A: Part XII - Privilege License Tax Changes

2013-2014 General Assembly

Committee:		**Date:**	May 13, 2014
Introduced by:		**Prepared by:**	Trina Griffin
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: ***Part XII would repeal the existing authority for cities to levy a privilege license tax and would replace it with a new authorization for cities to levy a business tax of up to $100 on each business location within the city. The new authorization would remove all of the prior restrictions and caps on certain businesses with the exception of certain utilities for which cities receive a share of tax revenue. It also repeals the more limited county authority to levy a privilege license tax. This proposal would become effective July 1, 2015.***

CURRENT LAW & BILL ANALYSIS:

Levy and Scope. – Under current law, a city has the authority to levy a privilege tax on all trades, occupations, professions, businesses, and franchises carried on within the city, subject to certain limitations.[1] These limitations range from outright prohibitions on certain businesses and professions to a cap on the amount of tax for other types of businesses. Otherwise, there is no statutory restriction on the amount of tax that may be charged. It may be in the form of a flat tax or a tax measured by gross receipts. Over 300 cities levy a privilege tax, producing significant revenue for about seven cities: Charlotte, Raleigh, Greensboro, Durham, High Point, Lumberton, and Hickory.

Under this proposal, cities would have the option of levying a business tax of up to $100 on each business operating within the city. A "business" is broadly defined as a retailer, a wholesale merchant, a service provider, a manufacturer, a franchise, or a nonprofit other than a 501(c)(3). The tax would apply to each business location. "Location" is defined as a uniquely identifiable geographic site or place from which one or more business units wholly or partly operates on a permanent or temporary basis. Accordingly, a business would be subject to the tax for each of its locations within a city, and a single location may house more than one business entity. Under current law, a business need not have a physical location within a city in order to be taxed; the business or trade need only be "carried on" within the city. For example, a landscaping company that has its only office in City A and performs landscaping services in Cities B, C, and D may be taxed by all of those cities. Under this proposal, the company could only be taxed in the city in which it has its physical business location.

[1] G.S. 160A-211(a), the subsection that authorizes cities to levy a privilege license tax, was inadvertently repealed in Section 58(b) of S.L. 2013-414. The repeal was a drafting error as evidence by the fact that Section 58(d) of that same act amends the same subsection and leaves the remainder of the statute intact. Section 12.1 of this proposal reenacts the provision to correct the error.

This proposal also eliminates the multitude of restrictions and caps on various types of trades, businesses, and professions that exist either by virtue of the repealed Schedule B or existing State privilege license tax statutes. For example, cities are currently prohibited from levying a privilege license tax on certain professionals who are taxed at the State level, such as attorneys, physicians, engineers, real estate brokers, and home inspectors. This proposal removes that restriction but limits the local tax to the business entity that employs the individual or with whom the individual is otherwise affiliated. Other businesses that cities are currently prohibited from taxing include banks, private protective services, burglar alarm dealers, household appliance dealers, and office equipment dealers. These restrictions are removed.

Approximately 64 types of businesses are subject to a cap on the amount of tax that a city may impose. Examples of businesses whose rate is capped at less than $100 include: amusements, $25; collection agencies, $50; peddlers of farm products, $25; contractors, $10; restaurants, $42.50; barbershops & beauty parlors, $2.50 per person employed; firearms dealers, $50; auto dealers, $25.

Prohibition. – Just as under current law, cities would still be prohibited from levying any license, franchise, privilege, or business taxes on the following businesses because cities receive a share of sales tax revenue levied on these businesses:

- Piped natural gas
- Telecommunications
- Video Programming
- Electricity

Administration. – The business tax would be administered the same way that it is now. A city would have to adopt an ordinance setting out the rate schedule. The tax would be levied on an annual basis and would be due by July 1 of each year. The penalties and collection remedies would essentially be the same as they are now.

Counties. – Section 2 of the bill repeals a county's authority to levy a privilege license tax. Based on the most recent data available, only 37 counties levy a privilege license tax and generate a cumulative total of less than $500,000.

EFFECTIVE DATE: This proposal would become effective July 1, 2015.

Bill Draft 2013-SVxz-22A: Part XIII - License Plate Agent Compensation

2013-2014 General Assembly

Committee:		**Date:**	May 13, 2014
Introduced by:		**Prepared by:**	Heather Fennell
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: Part XIII sets the LPA transaction rate for the collection of property tax under the Tax & Tag Together program at the transitional rate of $1.06, clarifies the increased rate applies to all transactions where an LPA collects property tax as of July 1, 2014, and allows the retroactive portion of the fee increase to be paid out over a three month time period.

CURRENT LAW: The Division of Motor Vehicles (DMV) is required to ensure, as far as practicable and possible, that registration and registration renewals for motor vehicles may be issued through license plate agents (LPAs) located in every community across the State. DMV enters into commission contracts with individuals to perform this service. The local tag agents are compensated on a per transaction basis. The standard rate for a transaction is $1.43. Unless otherwise provided, the performance of one or more transactions at the same time is considered a single transaction for purposes of compensation. Certain transactions are always considered separate transactions and allowed a different rate of compensation. The collection the highway use tax is considered a separate transaction and compensated at $1.27.

In September 2013, the State began implantation of a combined system for motor vehicle registration renewal and property tax collection. Under the new Tax & Tag Together program, the motor vehicle owner will receive one bill, and make one payment for both property taxes and vehicle registration renewal. The Tax & Tag Together program also provides for the issuance of a temporary registration plate if property taxes are not paid with the issuance of a new plate. A person may be issued a limited registration "T" sticker for the temporary registration plate.

S.L. 2013-372 provided increased compensation for LPAs new duties required under the Tax & Tag Together program. The collection of property taxes and the issuance of a "T" sticker" are recognized as separate transactions for the purpose of compensation. The transaction rate for the issuance of a "T" sticker was set at $1.27, effective July 1, 2013. The transaction rate for collecting property tax with registration renewals for the transitional period of the first six months of the Tax & Tag Together program was set at $1.06. The transaction rate after the first six months for both new registration and renewals was set at $0.71.

BILL ANALYSIS: Part XIII sets the LPA transaction rate for the collection of property tax under the Tax & Tag Together program at the transitional rate of $1.06. The transitional rate will apply to the collection of property taxes with registration renewals for the entire 2013 fiscal year. The draft also clarifies the increased rate applies to all transactions where an LPA collects property tax, effective July 1, 2014, therefore, setting the transitional rate of $1.06 per transaction to all collections of property tax by LPAs for the 2014 fiscal year and thereafter.

Below is a chart that shows the recent changes in the compensation to LPAs, as well as the proposed increase:

	Transaction fee to LPAs for collection of:				
	Property tax with renewal		Property tax with new registration		Property tax with new registration and renewals
	July 2013 – March 2014	March 2014 – July 2014	July 2013 – March 2014	March 2014 – July 2014	July 2014 and thereafter
Prior to 2013-372	$0.48	$0.48	$0.48	$0.48	$0.48
2013-372	$1.06	$0.71	$0.71	$0.71	$0.71
Draft proposal	No change	$1.06	No change	No change	$1.06

Under current law, the fee for property tax collection by LPAs for renewals that expire on or after March 1, 2014, will decrease to $0.71. The draft extends the transitional rate of $1.06 for the collection of property tax with registration renewals that expire on or after June 30, 2014. If enacted, the draft proposal would direct DMV to calculate the difference in the payments made under the current law and the proposed increase in this draft by September 1, 2014. The difference in the two rates would be paid to LPAs by deducting the appropriate amount of the property tax revenues remitted to the counties. The payment to the LPAs and the corresponding reduction in the payments to the counties would be made in equal amounts over a three month period.

The draft also clarifies the increased fee for property tax collection applies to all transactions where a LPA collects property taxes, effective July 1, 2014.

DMV receives compensation from the counties for the duties it performs under the Tax & Tag Together program. A conforming change made in S.L. 2013-372 has been interpreted to provide DMV with an increase in the fee it receives for the collection of property tax to mirror the amount paid to LPAs. This draft maintains the increase in the fee to $0.71 for DMV provided in S.L. 2013-372, but does not provide DMV with the increase provide LPAs in this draft. The fee provided to DMV will be the amount set in the Memorandum of Understanding (MOU) signed by the Department of Revenue and the Division of Motor Vehicles. Future MOUs can amend the transaction fee paid to DMV, but the fee cannot exceed the per transaction fee allowed for LPAs.

EFFECTIVE DATE: The portion of this Part related to the fee for registration renewals is effective March 1, 2014. The remainder of this Part is effective July 1, 2014.

2013-2014 General Assembly

Bill Draft 2013-SVxz-22A: Part XIV - Technical, Clarifying, & Administrative Changes

Committee: **Date:** May 13, 2014
Introduced by: **Prepared by:** Trina Griffin
Analysis of: 2013-SVxz-22A Committee Counsel

SUMMARY: ***Part XIV makes clarifying, conforming, and administrative changes to the various tax laws. Unless otherwise stated, this Part would become effective when it becomes law.***

CURRENT LAW, BILL ANALYSIS, AND EFFECTIVE DATE:

Section	Explanation and Effective Date
14.1	This section corrects a cross reference.
14.2	This section replaces two outdated references with respect to qualifying for the major recycling facility tax credits. First, it replaces the term "enterprise tier one area" with the term "development tier one area." The current statute requires that, at the time the owner begins construction, the facility be located in an enterprise tier one area. The term "enterprise tier one area" was part of the Bill Lee tax credits, which expired in 2007. The current equivalent term, originating with the enactment of the Article 3J tax credits, is "development tier one area." A development tier one area is a county whose annual ranking is one of the 40 highest in the State. Second, it deletes the wage standard requirement to be consistent with the current law as it applies to a tier one area. In 2002, the General Assembly eliminated the wage standard for enterprise tier one and two areas[1] but a conforming change was not made to this statute. At the time, there was only one taxpayer that qualified for the credit, and the wage standard was only required to be met at the time construction began on the facility, which had already occurred. However, to the extent there may be taxpayers who qualify for this credit, which is only available in a tier one area, in the future, the statute should be amended to reflect the fact that the wage standard is no longer a requirement in a tier one area.
14.3	This section inserts a word that was inadvertently omitted.

[1] S.L. 2002-172.

14.4(a)	This section deletes the definition of "Dependent" because the term is not required after the changes made by House Bill 998, S.L. 2013-316.
14.4(b) & 14.5	This section updates the terminology used in the statutes authorizing withholding of income tax from wages. After House Bill 998, S.L. 2013-316, "exemptions" are not part of the computation of estimated tax to withhold from wages. Instead, the Department of Revenue uses the term "allowances."
14.6	This section deletes a statutory formula used to calculate the amount of estimated tax to withhold from pension payments where the recipient fails to file a withholding tax form. After House Bill 998, S.L. 2013-316, the statutory formula no longer approximates recipient's tax liability. Recipients who do not complete the tax form to calculate withholding from pension payments will be treated the same as employees who do not complete the tax form.
14.7	This section makes technical changes to sales tax definitions. It deletes the word "retail" within the definition of "net taxable sales" because the term is already included by virtue of the definition of the term "gross sales." It also deletes the word "the" in the definition of "retailer" because "engaged in business" is the proper defined term.
14.8	This section makes various technical changes to the sales tax imposition statute.
14.9	This section clarifies that a facilitator who is liable for tax[2] must obtain a certificate of registration like other retailers. A facilitator is a person, other than a real estate agent, who contracts with a provider of an accommodation to market the accommodation and who accepts payment from the consumer for the accommodation. An example of a facilitator would be an online travel company like Expedia, Orbitz, or Priceline.
14.10	This section provides for the applicable due date for a sales tax payment if the due date falls on a weekend or holiday or on a day that the Federal Reserve Bank is closed, which prohibits a person from making a payment by ACH[3] Debit or Credit. These provisions are currently contained in an informational document on the Department's website, but there is not a specific statute, other than one that applies only to payment of property taxes.[4]

[2] Under G.S. 105-164.4(a)(3), a facilitator must send the retailer the portion of the sales price that the facilitator owes the retailer plus the tax due once the accommodation rental marketed by the facilitator is completed. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator failed to send.

[3] Automated Clearing House Debit is a method of payment that enables companies to electronically withdraw funds from bank accounts using bank routing numbers and individual account number.

[4] G.S. 105-395.1.

14.11	This section changes from March 1 to March 15 the annual due date for the captive insurance tax return. S.L. 2013-116 provided that the annual report due date for some captive insurance companies is March 1 and, for others, such as a pure captive, it is March 15. The tax returns for all captives are due March 1. This year, the pure captive insurance companies filed premium tax returns by the March 1 due date and attached to the return copies of pages from their annual reports in support of the premium information marked "draft" since the tax return was due before the financial statement. This issue would be eliminated by changing the due date for all premium tax returns to March 15.
14.12	This section makes one technical change and one substantive change. The technical change corrects a statutory reference. The substantive change would add a new criminal offense to the list of offenses for which the Secretary of Revenue may appoint employees of the Criminal Investigations Division to serve as revenue law enforcement officers. The new offense, which was created by the General Assembly in 2013, is for the possession, transfer, or use of an automated sales suppression device, informally known as "tax zapper software."
14.13	This section provides the Department of Revenue with guidance on how to treat amended returns filed under two repealed taxes. Subsections (a) and (b) provide guidance for amended returns filed under the franchise tax on electricity. Subsections (c) and (d) provide guidance for amended returns filed under the excise tax on piped natural gas. Subsections (e) and (f) clarify that only cities that received a distribution under the repealed franchise tax and excise tax will receive distributions from the new sales tax on electricity and piped natural gas. The Tax Reduction Act, S.L.2013-316, included electricity and piped natural gas in the State sales tax base while repealing the utility franchise tax on electricity and the excise tax on piped natural gas. A portion of both of the repealed taxes was shared with the cities. The Tax Reduction Act replaced the tax-sharing revenue under the repealed taxes with a distribution of part of the sales tax on electricity and piped natural gas. The amount distributed to each city under the sales tax is based on the distribution under the repealed taxes the last year those taxes were in effect. Utilities are allowed to file amended returns on the repealed taxes for up to three years. Amended returns filed on the repealed taxes can change both distributions under the repealed taxes and the amount to be distributed to cities under the new sales tax on electricity and piped natural gas. These sections provide guidance to the Department on how to treat amended returns that change past and future distributions. First, it provides that any additional funds needed for increases to past distributions under the repealed taxes can be drawn from the sales tax revenue. Second, it creates a date certain for the future distributions to be determined. The Department of Revenue will set the distributions for each fiscal year by September 15 using amended returns processed by the Department prior to

	July 31 of that year.
14.14	Property that is appraised at its present use value may remain in the program if the property is under an enforceable conservation easement that would qualify for the conservation easement tax credit. S.L. 2013-316 repealed the conservation easement tax credit for taxable years beginning on or after January 1, 2014. The repeal of the tax credit was not intended to effect property in the present use value program. This section puts the applicable provisions that were provided in the tax credit statutes in Chapter 113A and makes the necessary conforming changes in other statutes.
14.15	This section deletes an inconsistent effective date for the repeal of G.S. 105-159.2 which formerly allowed a taxpayer to checkoff a donation to the North Carolina Public Campaign Fund. Section 38.1.(f) of S.L. 2013-381 repealed G.S. 105-159.2 effective July 1, 2013. This section makes the effective date of a duplicative repeal in Section 21.1.(c) of S.L. 2013 360 effective at the same time.
14.16	This section updates from January 2, 2013, to December 31, 2013, the reference to the Internal Revenue Code. This change keeps the statute up to date, but does not result in any substantive changes because there have not been any federal tax law changes since January 2, 2013, that impact the calculation of North Carolina taxable income.
14.17	This section changes the name of the document filed by the Secretary of Revenue to release an erroneous tax lien. Currently, the Department of Revenue files a "certificate of release" that credit reporting agencies treat as a negative item on a credit report. The renamed document, "certificate of withdrawal," is expected to cancel the original tax lien without impacting the taxpayer's credit report. This section is effective when it becomes law.
14.18	S.L. 2013-157 made a number of changes to North Carolina's Limited Liability Company Act. Among the changes was a new defined term of "company official" defined as: "*Any person exercising any management authority over the limited liability company whether the person is a manager or referred to as a manager, director, or officer or given any other title.*" This section incorporates the new term into the responsible person statute, which provides for personal liability when certain taxes are not paid. The section also removes the limitation on the type of withholding taxes that can be collected from a responsible person. Current law allows the Department of Revenue to hold business operators liable for income tax withheld on employee wages. This section eliminates the requirement that the withholding be for employee wages. For example, withholding on independent contractors could now be collected from responsible persons. This section is effective when it becomes law.

14.19	This section updates a statutory reference.
14.20	S.L. 2013-316 repealed the individual income tax credit for property taxes paid on farm machinery. This section removes references to the tax credit that are no longer needed in the property tax statutes.
14.21	This section makes a technical correction by adding (32a) to the list of exempt inventories for which a person need not provide a report under G.S. 105-315 and makes stylistic changes to update the statute.
14.22	This section repeals an obsolete subsection. G.S. 105-537(d) provides that a county may not levy the one-quarter cent sales and use tax under Article 46 if it also levies the land transfer tax under Article 60. Article 60 was repealed by S.L. 2011-18.
14.23	This section corrects a Session Law reference in last year's Revenue Laws Technical changes act with respect to a local occupancy tax act.
14.24	This section creates a new limited registration plate for vehicles that are registered after the prior registration on the vehicle has expired. Current law provides for a limited registration plate for an initial registration, but there is not a similar provision for registration renewals. This section is designed to solve two customer service problems, one involving military service members, and the second involving appeals for vehicle valuations where the customer has not been given an opportunity to appeal the valuation. There are instances where an individual can choose not to renew the registration on a vehicle for a year or longer. As long as the vehicle is not being driven, this is allowed under the law. When the vehicle will be operated again, the owner must renew the vehicle registration. Under Tax & Tag Together, when the individual renews the registration, property taxes on the vehicle for the upcoming tax year are due at the time of renewal. Military service members – The federal Service Members Civil Relief Act provides that personal property (including vehicles) of service members is not subject to personal property taxes simply due to the fact that the member is serving in the state. Active duty service members often do not renew vehicle registrations when the member is deployed overseas. Under Tax & Tag Together, when a service member returns from deployment and seeks to renew a vehicle registration, the system will not allow the vehicle to be registered without payment of the property tax, even if the service member does not owe the tax. Valuation appeals – Under current law, individuals may appeal the valuation assigned to a motor vehicle for property tax purposes. Taxpayers are given notice of the valuation of the vehicle and the right to appeal on the combined property tax

	notice. The combined notice is sent 60 days prior when the taxes are due. However, if an individual has allowed the registration to lapse more than a year, the individual would not have received a bill and would not have received notice of the tax value for the upcoming property tax year. Under the current system, the taxpayer will not be able to renew the vehicle registration without paying the tax for which the taxpayer did not have the opportunity to appeal. This section allows a temporary limited registration plate to be issued in both of these circumstances. Once the limited registration plate is issued, the taxpayer would have 60 days to remedy the tax issue. Once the tax issue has been resolved, the taxpayer could apply for a permanent tag.

Bill Draft 2013-SVxz-22A: Part XV - Tax Vapor Products/ Prohibit in Jails.

2013-2014 General Assembly

Committee:		**Date:**	May 14, 2014
Introduced by:		**Prepared by:**	Heather Fennell
Analysis of:	2013-SVxz-22A		Committee Counsel

SUMMARY: ***Part XV would provide an excise tax of 5¢ per milliliter to be imposed on vapor products, would prohibit the use of vapor products in State correctional facilities, and would make it a criminal offense to for a person to provide a vapor product to an inmate of a local confinement facility and for an inmate to possess a vapor product.***

CURRENT LAW: Under G.S. 105-113.5, cigarettes are taxed at 45¢ per pack. Other tobacco products (OTP), including pipe tobacco and roll-your-own tobacco is taxed under G.S. 105-113.35 at 12.8% of the cost of the product. The tax on cigarettes is paid by the distributor of the product. The tax on OTP products is payable by the wholesale dealer or retail dealer who first acquires or otherwise handles the product.

An electronic cigarette is a handheld device that produces vapor from a liquid. The liquid is generally heated to produce the vapor by a battery operated device. The liquid usually contains nicotine and sometimes contains flavors. The amount of the nicotine in the liquid can vary. Most electronic cigarettes are reusable. The liquid in the device can either be replenished replacing the cartridge that holds the liquid, or by manually refilling the liquid container.

In 2009, Congress enacted the Family Smoking Prevention and Tobacco Control Act, which gave the US Food and Drug Administration (FDA) the authority to regulate new tobacco products including e-cigarettes, nicotine gels, cigars, pipe tobacco, and dissolvable nicotine products.

In April 2014, the FDA issued proposed rules to regulate e-cigarettes. The proposed rules will be subject to 75 days of public comment. The proposed rules deem e-cigarettes a "tobacco product" for the purpose of federal regulation. The rules further propose to subject e-cigarettes to the following restrictions:

- Enforcement against adulterated or misbranded products.
- Ingredient disclosure and reporting of harmful components.
- No modified risk descriptors (light cigarettes).
- No free samples.
- Premarket review.
- Minimum age for purchase.

2013-2014 General Assembly

Bill Draft 2013-SVxz-22A*: Part XVI - Change Corporate Apportionment Formula to Four Times the Sales Factor

Committee:		**Date:**	May 14, 2014
Introduced by:		**Prepared by:**	Cindy Avrette
Analysis of:	2013-SVxz-22A*		Committee Counsel

SUMMARY: Part XVI amends the apportionment formula for the calculation of corporate income and franchise tax.

CURRENT LAW: In order to tax multistate corporations, states must determine the amount of the corporation's business that is attributable to that state for tax purposes. States make this determination by calculating an apportionment percentage. Multistate corporations multiply their income and franchise tax base by this apportionment percentage to calculate their corporate tax liability.

States generally look at three factors to calculate the apportionment percentage:

- The percentage of the corporation's property located in the state.
- The percentage of the corporation's payroll located in the state.
- The percentage of the corporation's sales in the state.

The states vary in how they assign weight to these three factors. An equally weighted apportionment formula would provide that each of the three factors are weighed equally.

For most corporations, North Carolina currently uses the property, payroll, and sales factor with a double weighted sales factor.

BILL ANALYSIS: Part XVI amends the apportionment formula for the calculation of corporate income and franchise tax by moving from a double weighted sales factor to a four-times weighted sales factor.

EFFECTIVE DATE: This act is effective for tax years beginning on or after January 1, 2015.

G.S. 148-23.1 prohibits the use and possession of tobacco products anywhere on the premises of a State correctional facility. Exemptions are provided for use and possession for religious purposes consistent with the policies of the Department of Public Safety (DPS), and also for possession by employees or visitors within the confines of a motor vehicle located in a parking area if the tobacco product remains in the vehicle and the vehicle is locked when the employee or visitor exits the vehicle.

G.S. 14-258.1 provides that it is a Class 1 misdemeanor to do either of the following:

- To knowingly give or sell tobacco products to an inmate on the premises of a correctional facility or in the custody of a local confinement facility, or to a person for delivery to an inmate.
- For an inmate in the custody of a local confinement facility to possess tobacco products.

BILL ANALYSIS:

Excise tax: Section 15.1 of Part XV would impose an excise tax of 5¢ per milliliter of the consumable product of vapor products. Vapor products are defined as noncombustible products that use a heating element to produce vapor from nicotine in a solution. The consumable product is the part of the vapor product that contains the nicotine liquid solution. All invoices for vapor products must contain the amount of the consumable product in milliliters.

The tax would be administered in a similar fashion to the tax on OTP. The tax will be paid the wholesale dealer or retail dealer who first acquires or otherwise handles the product. The tax does not apply to products sold outside the State, products sold to the federal government, or products distributed without charge. Taxes are paid monthly. Each dealer must keep sufficient records of vapor products transactions.

Wholesale dealers and retail dealers must obtain a license for each place of business that handles vapor products. The license fee for wholesale dealers is $25, and the license fee for retail dealers is $10.

Taxpayers that timely file returns and payments of the taxes on OTP are allowed a discount of 2% of the amount due. This discount will not apply to the tax on vapor products.

No vapor in prisons and jails: Section 15.2(a) of Part XV prohibits the use of vapor products in State correctional facilities. Exemptions are provided for use and possession for religious purposes consistent with the policies of DPS, and for possession by employees or visitors within the confines of a motor vehicle located in a parking area if the vapor product remains in the vehicle and the vehicle is locked when the employee or visitor exits the vehicle.

Section 15.2(b) it a Class 1 misdemeanor for either of the following:

- To knowingly give or sell vapor products to an inmate on the premises of a correctional facility or in the custody of a local confinement facility, or to a person for delivery to an inmate.
- For an inmate in the custody of a local confinement facility to possess vapor products.

EFFECTIVE DATE: The provisions related to imposing the excise tax on vapor products is effective February 1, 2015. The provisions related to vapor products in State and local confinement facilities are effective December 1, 2014.

APPENDIX A

AUTHORIZING LEGISLATION
ARTICLE 12L OF CHAPTER 120
OF THE
GENERAL STATUTES

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE VIEWED ON THE COMMITTEE'S WEBSITE:
http://www.ncleg.net/committees/revenuelaws

ARTICLE 12L

Revenue Laws Study Committee

§ 120-70.105. Creation and membership of the Revenue Laws Study Committee.

(a) Membership. – The Revenue Laws Study Committee is established. The Committee consists of 20 members as follows:

(1) Ten members appointed by the President Pro Tempore of the Senate; the persons appointed may be members of the Senate or public members.

(2) Ten members appointed by the Speaker of the House of Representatives; the persons appointed may be members of the House of Representatives or public members.

(b) Terms. – Terms on the Committee are for two years and begin on January 15 of each odd-numbered year, except the terms of the initial members, which begin on appointment. Legislative members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until a successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment. (1997-483, s. 14.1; 1998-98, s. 39; 2009-574, s. 51.1.)

§ 120-70.106. Purpose and powers of Committee.

(a) The Revenue Laws Study Committee may:

(1) Study the revenue laws of North Carolina and the administration of those laws.

(2) Review the State's revenue laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, easy to administer, and equitable.

(3) Call upon the Department of Revenue to cooperate with it in the study of the revenue laws.

(4) Report to the General Assembly at the beginning of each regular session concerning its determinations of needed changes in the State's revenue laws.

These powers, which are enumerated by way of illustration, shall be liberally construed to provide for the maximum review by the Committee of all revenue law matters in this State.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. When a recommendation of the Committee, if enacted, would result in an increase or decrease in State revenues, the report of the Committee must include an estimate of the amount of the increase or decrease.

(c) The Revenue Laws Study Committee must review the effect Article 42 of Chapter 66 of the General Statutes, as enacted by S.L. 2006-151, has on the issues listed in this section to determine if any changes to the law are needed:

(1) Competition in video programming services.

(2) The number of cable service subscribers, the price of cable service by service tier, and the technology used to deliver the service.

(3) The deployment of broadband in the State.

The Committee must review the impact of this Article on these issues every two years and report its findings to the North Carolina General Assembly. The Committee must make its first report to the 2008 Session of the North Carolina General Assembly. (1997-483, s. 14.1; 2006-151, s. 21.)

§ 120-70.107. Organization of Committee.

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Revenue Laws Study Committee. The Committee shall meet upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) The Committee shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose. Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1 and G.S. 138-5. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee. (1997-483, s. 14.1.)

APPENDIX B

DISPOSITION OF COMMITTEE'S RECOMMENDATIONS TO THE 2013 REGULAR SESSION OF THE 2013 GENERAL ASSEMBLY

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE VIEWED ON THE COMMITTEE'S WEBSITE:
http://www.ncleg.net/committees/revenuelaws

DISPOSITION OF REVENUE LAWS STUDY COMMITTEE RECOMMENDATIONS TO THE 2013 REGULAR SESSION OF THE 2013 GENERAL ASSEMBLY

SHORT TITLE	SENATE SPONSORS	HOUSE SPONSORS	BILL #	FINAL STATUS*
UI Fund Solvency & Program Changes	Rucho Rabon Brock	Howard Warren Starnes Setzer	HB 4 SB 6	Enacted* SL 2013-2, [HB 4]
Revenue Laws Technical, Clarifying, & Administrative Changes	Rucho	Howard R. Brawley	HB 14 SB 5	Enacted* SL 2013-414, [HB 14]

* Bills were modified prior to enactment.

APPENDIX C

MEETING AGENDAS

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE VIEWED ON THE COMMITTEE'S WEBSITE:
http://www.ncleg.net/committees/revenuelaws

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard *Sen. Bill Rabon*

Tuesday, October 8, 2013
Room 544, Legislative Office Building
9:30 a.m.

I. Welcome and Introductions

II. 2013 Finance Law Changes

III. Sales Tax Changes Effective January 1, 2014
Focus: Repealed Exemptions

IV. Sales Tax Changes Effective January 1, 2014
Focus: Admission Charges to an Entertainment Activity

V. Sales Tax Changes Effective January 1, 2014
Focus: Service Contracts

VI. Performance Contracts

VII. Adjournment

Next Meeting Date: Tuesday, November 12, 2013
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard ***Sen. Bill Rabon***

Tuesday, November 12, 2013
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcome and Approval of Minutes from the October 8, 2013, Meeting**

II. **Performance Contracts**
Trina Griffin, Research Division

III. **Subcommittee Report: Exemptions to Sales Tax on Admission Charges**
Sen. Rucho, Rep. Carney, Rep. Moffitt

IV. **Bill Draft: Clarifying Tax Law Changes**
Cindy Avrette, Research Division

V. **Local Distributional Issues**
Heather Fennell, Research Division

VI. **Adjournment**

Next Meeting Date: Tuesday, December 10, 2013
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard ***Sen. Bill Rabon***

Tuesday, December 10, 2013
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcome and Approval of Minutes from the November 12, 2013, Meeting**

II. **Follow-up on Local Distributions: Sourcing Issues and Refunds of Local Sales Tax**
David Baker, Director, Local Government Division, Department of Revenue

III. **Implementation of the "Tax and Tag" Collection of Property Taxes on Motor Vehicles**
Pat Goddard, Johnston County Tax Assessor

IV. **Overview of Corporate Income Tax and Potential Legislative Changes for Consideration**
Jonathan Tart, Fiscal Research Division

V. **Bill Draft Re: Income Tax Technical Changes**
Greg Roney, Research Division

VI. **Personal Income Tax Changes under House Bill 998**
Cindy Avrette, Research Division

VII. **Follow-up on Bill Draft re: Various Tax Law Changes**
Cindy Avrette, Research Division

VIII. **Adjournment**

Next Meeting Date: Tuesday, January 14, 2014
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard ***Sen. Bill Rabon***

Tuesday, January 14, 2014
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcome and Approval of Minutes**

II. **Subcommittee Reports**
- *Performance Contracts – Sen. Barringer, Chair*
- *Compensation of License Plate Agents – Sen. Clark, Chair*
- *NEL vs. NOL Subcommittee – Rep. Lewis, Chair*

III. **Overview of Business Taxes: Privilege license taxes**

Part I – State Taxes

- **Franchise Tax & Other Privilege Taxes**
  - *Jonathan Tart, Fiscal Research Division*

Part II – Local Taxes

- *Christopher McLaughlin, Assistant Professor of Public Law and Government, UNC School of Government*
- *Paul Meyer, Director of Governmental Affairs, League of Municipalities*
  - *Robin Rose, Deputy Chief Financial Officer, City of Raleigh*
- *Andy Ellen, President and General Counsel, NC Retail Merchants' Association*
  - *Lynn Ford, Ford's Produce, Raleigh, NC*
  - *Dick Harlow, Dick Broadcasting, Greensboro, NC*
  - *Mack McLamb, Carlie C's, Dunn, NC*

IV. **Collections and Compliance Update**
- *Charlie Helms, Director of Collections Division, Department of Revenue*

V. **Adjournment**

Next Meeting Date: Tuesday, February 11, 2014
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard ***Sen. Bill Rabon***

Tuesday, February 11, 2014
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcome**

II. **Approval of Minutes from January 14, 2014, Meeting**

III. **Status on TIMS**
Jeff Epstein, Chief Operating Officer, Department of Revenue

IV. **Subcommittee Report: Replace the Corporate Income Tax Deduction for Net Economic Loss with Net Operating Loss**
Rep. Lewis; Rep. Blust; Sen. Hartsell

V. **Subcommittee Report: Sales Tax Applicability to Retailers-Contractors**
Sen. Barringer; Sen. Gunn; Rep. Brawley
Trina Griffin, Research Division

VI. **Income Tax on Estates and Trusts: "Residency of the Beneficiary"**
Mike Godwin, Attorney, Schell Bray Aycock Abel & Livingston PLLC, Legislative Committee of the Estate Planning and Fiduciary Law Section of the NC Bar Association

VII. **Bill Draft: Fair and Flat Local Business Tax**
Trina Griffin, Research Division; Sandra Johnson, Fiscal Research Division

VIII. **Tax Compliance Initiatives**
- **Bill Draft: Tax Law Compliance Condition of ABC Permit**
  Greg Roney, Research Division
- **Increase Locator Service Fee and Outsource Debt Collection**
  Charlie Helms, Director of Collections Division, Department of Revenue

IX. **Single Sales Factor Apportionment and Market-Based Sourcing**
Jonathan Tart, Fiscal Research Division

X. **Sales Tax Changes Effective July 1, 2014**
- **Taxation of Electricity and Piped Natural Gas**
  Heather Fennell, Research Division
- **Other Sales Tax Changes**
  Cindy Avrette, Research Division

XI. **Bill Draft: Clarify Application of Sales Tax on Service Contracts**
Cindy Avrette, Research Division

XII. **Adjournment**

Next Meeting Date: Tuesday, March 11, 2014
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard ***Sen. Bill Rabon***

Wednesday, March 12, 2014
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcome and Approval of Minutes from the February 11, 2014, Meeting**

II. **Educational Presentations**
- **Specialty Market Vendors**
  Greg Roney, Research Division
- **JDIG and One NC**
  Aubrey Incorvaia, Fiscal Research Division

III. **Subcommittee Report and Bill Draft: Compensation of Licensed Plate Agents**
Sen. Clark, Sen. Gunn, Sen. Tillman, Rep. Carney, Rep. Lewis, Rep. Starnes, and Rep. Waddell
Heather Fennell, Research Division

IV. **Subcommittee Report and Bill Draft: Net Economic Loss/Net Operating Loss**
Rep. Lewis, Rep. Blust, and Sen. Hartsell
Cindy Avrette, Research Division
Jonathan Tart, Fiscal Research Division

V. **Bill Draft: Excise Tax Changes**
Cindy Avrette, Research Division

VI. **Bill Draft: Flat and Fair Local Business Tax**
Trina Griffin, Research Division
Sandra Johnson, Fiscal Research

VII. **Bill Draft: Tax Law Compliance Condition of ABC Permit and Increase Locator Service Fee**
Greg Roney, Research Division

VIII. **Adjournment**

Next Meeting Date: Tuesday, April 8, 2014
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard ***Sen. Bill Rabon***

Wednesday, April 9, 2014
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcome and Approval of Minutes from the March 12, 2014, Meeting**

II. **Subcommittee Report and Recommendation: State Net Loss**
Rep. Lewis, Rep. Blust, and Senator Hartsell
Jonathan Tart, Fiscal Research Division
Cindy Avrette, Research Division

III. **Bill Drafts Related to Sales Tax Changes**
Cindy Avrette, Research Division
- **Agricultural Exemption Certificate**
- **Prepaid Meal Plans**
- **Admissions**
- **Service Contracts**

IV. **Bill Drafts Related to Various Tax Law Changes**
Trina Griffin, Research Division
- **Revenue Laws Technical Changes**
- **Revenue Laws Clarifying and Administrative Changes**

V. **Follow-up on Bill Drafts from Previous Meetings**
- **Compensation of License Plate Agents**
Heather Fennell, Research Division
- **Excise Tax Changes**
Cindy Avrette, Research Division
- **Fair and Flat Business Tax**
Trina Griffin, Research Division

VI. **Bill Drafts Tentatively Approved at Prior Meetings**
- **Sales Tax Retailer-Contractors**
Trina Griffin, Research Division
- **Tax Law Compliance Condition of ABC Permit and Increase Locator Service Fee**
Greg Roney, Research Division

VII. **Discussion Related to Final Report**

VIII. **Adjournment**

Next Meeting Date: Tuesday, May 13, 2014
in Room 544, LOB, at 9:30 a.m.

REVENUE LAWS STUDY COMMITTEE AGENDA

Rep. Julia Howard ***Sen. Bill Rabon***

Tuesday, May 13, 2014
Room 544, Legislative Office Building
9:30 a.m.

I. **Welcome and Introductions**

II. **Approval of Minutes from April 9, 2014, Meeting**

III. **Bill Draft: Omnibus Tax Law Changes**
Review of Committee Recommendations Approved at Previous Meetings, revised
Finance Team

IV. **Taxation of Vapor Cigarettes**

- **Overview of Issue and Bill Draft**
  Heather Fennell, Research Division, NCGA
- **Background Information**
  David Powers, RAI Services Company

V. **Single Sales Factor Apportionment: Bill Draft and Summary**
Jonathan Tart, Fiscal Research Division

VI. **Approval of Final Report and Instructions to Staff**

VII. **Adjournment**